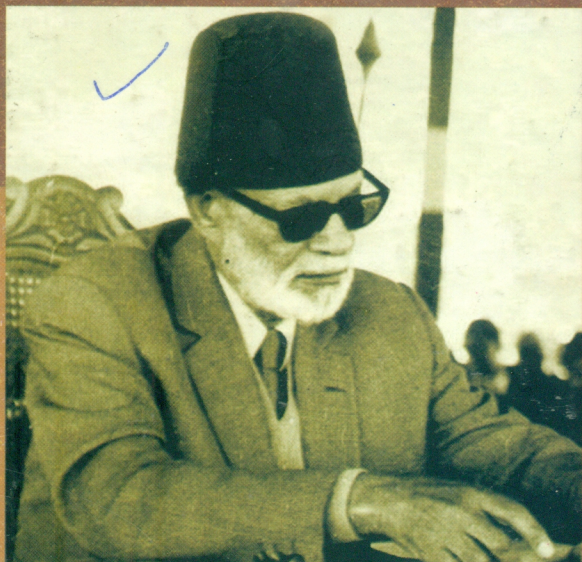


# Sir Zafrulla's Contribution to the Freedom Movement

(1926 to December 25, 1947)

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Edited & Compiled by  
**Dr. Pervez Perwazi**

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to the  
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NIA ZAMANA PUBLICATIONS



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## Table of Contents

<b>Foreword</b>	14
<b>Part I</b>	34
Memorandum	35
Introductory	35
Complete Independence	36
Constituent Assembly	38
Dominion Status	41
The Communal Problem	43
Muslim Attitude	50
Separation Scheme	53
All India Federation	55
Indian States	58
Federal Legislature	60
Federal Subjects	61
Provincial Subjects	62
Defense	63
North –West Frontier and Baluchistan	66
Safeguards	67
Representation	74
The Judiciary	80

Provincial Governors	82
Reserve Bank	83
Conclusion	84
Categories of Detractors	88
Unmitigated failures	89
Attack on Muslim Nationhood	92
Second Category	93
Barebones of doctrine	94
Opposite to what Wali divined	95
Softening up process	96
Success hinged on one man	98

<b>Part II</b>	
January 1942 – December 1947	111
<b>APPENDIX 1</b>	166
<b>ANNEX I</b>	177
<b>ANNEX II</b>	182
<b>References</b>	212
<b>Index</b>	216

## A WORD OR TWO FROM THE COMPILER

Writing about Sir Mohammad Zafrulla Khan is not an easy task. He had such a versatile personality that it seems simply impossible to cover all aspects of his genius. He started his career as a lawyer, was elected to the Punjab Legislative assembly and made his mark as a brilliant and articulate politician. He served his country as a representative to the Round Table Conferences, then as a Member of the Executive Council of the Viceroy for two consecutive terms with two Viceroys. It was during his second tenure as a Member of the Executive Council, that he was elevated to the Bench of the Federal Court of India. This book tends to cover his services to the Freedom Movement during the period of his splendid active participation and then after his elevation to the Federal Court Bench, when he was virtually isolated from politics. He never lost sight of his primary aim of working for the benefit of his country and people.

To elaborate his aims I would quote, Sir Srinawas Shastri, an eminent member of the Imperial Legislative Council. Once the Governor General asked him, "What was the logic behind your stand?" he innocently replied "because my Lord! This is



our country and we wish to rule it". Sir Mohammad Zafrulla Khan who had quoted this in his autobiography, Tehdith-e-Nemat, this sudden quip of a patriot, always stayed in his mind and never missed a chance to be an "evangelist and plead the cause of freedom from any available pulpit "as very well put by Lord Linlithgow", the Viceroy of that time.

This book covers significant segment of his services; but I hope this would prove to be the first drop of bounteous rain, for the authors to follow and conduct research on his innumerable services in the fields of Politics, administration, diplomacy, Jurisprudence, judgeship and as an international statesman.

Deep down in his heart he was a deeply religious man. His faith in Allah never faltered. He kept a close contact with his spiritual master, all the four Successors of the Promised Messiah, to whom he had taken covenant of allegiance in spiritual matters. He was a devout Ahmadi, and this kept the quasi literate clergy of Pakistan clamouring for his removal from important governmental assignments. He stood firm where he was ordained by Allah to stand. The Quaid-e-Azam, Mohammad Ali Jinnah, and after him, his successors retained their confidence in him. When the time came for his elevation to the International Court of Justice he was nominated and elected against all odds.

After his retirement from the International Court of Justice at The Hague he devoted himself to writing. His translation of the Holy Quran has been acclaimed as the Simplest and Scholarly while his other book "Islam: its meaning for the Modern man" continue to receive accolades as a great effort in interpreting Islam in a rational idiom.

I have tried to keep the spirit of his affection and reverence to religion alive, because this was his style in his autobiographies

in Urdu and in English. This book only tends to confirm his statements made by him in his memoirs. It also answers many questions which have been raised by some biased intellectuals tending to make his person controversial.

Dr. Pervez Perwazi.

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T.I.College, Rabwah.

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Osaka University Japan,

Prof/Research Associate,

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January 1, 2011

5914. Long Valley Road, Mississauga. On.

L5M 6J6 Canada.

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Sir Mohammad Zafrulla Khan K.C.S.I, B.A.LL.B; Pakistani politician and diplomatist; born 6 February, 1893; Educated at Govt. College, Lahore, and King's College London, Barrister-at-Law (Lincoln's Inn), Advocate Sialkot, Punjab 1914-16, practiced at Lahore High Court 1916-1935; Elected member Punjab Legislative Council 1926-35; delegate Indian Round Table Conferences 1930, 31, 32; delegate Joint Select Committee of Parliament on Indian Reforms 1933; President All India Muslim League, 1931; Member Governor General Executive Council 1935-41; Leader Indian Delegation to the Assembly of League of Nations 1939; Agent General of India in China 1942; Judge Federal Court of India 1941-47; Constitutional Advisor to H.H. the Ruler of Bhopal June-December 1947; Leader Pakistan Delegation to Annual Session of the United Nations General Assembly Sep-November 1947; Minister of Foreign Affairs and Commonwealth Relations, Govt. of Pakistan 1947; Leader Pakistan delegation to U.N. Security Council on India Pakistan dispute 1948-54, and to Sessions of United Nations General Assembly 1947-54; Leader Pakistan delegation to San Francisco Conference on Japanese Peace Treaty 1951; Leader Pakistan delegation to SEATO Conference Manila 1954; Judge International Court of Justice The Hague, 1954-61, 1964-73, Vice President. 1958-61, President 1970-73; Permanent Representative of Pakistan to U.N. 1961-64; President 17th Session of the UN General Assembly 1962-63. Hon. Bencher Lincoln's Inn; Hon. Fellow of London School of Economics; Hon. LL.D. (Cambridge); Hon. Fellow, Delegacy of Kings College, London, Hon. LL.D. Universities of Columbia, Denver, California (Berkley), Long Island, Hon.

D.C.I. Beaver College Penn.

**Publications:** Islam : Its meaning for Modern Man 1962,  
The Quran ( translated into English) 1970.

Passed away in Lahore on September 1, 1985 was buried at Rabwah, Pakistan, according to his will. The UN flag remained at half mast all over the world to respect the memory of the person who had the unique honor of being the President of the UN General Assembly Session and the International Court of Justice. No other diplomat or Judge has achieved this dual distinction so far.

(Who's Who: an annual biographical dictionary, 137 Year Issue. London. A&C. Black P 2139).

## **Dedicated**

To the fond memory of my late father

Maulana Ahmed Khan Naseem, a missionary of Islam

and My father in law

Mualna Mohammad Ahmad Jaleel, an expert in Islamic  
Jurisprudence

May Allah bless their souls.



## Acknowledgments

I am grateful to my friend Kunwar Idris who introduced me to Syed Babar Ali, Vice Chancellor of LUMS University Lahore and he very kindly wrote the Foreword to this book.

I am also indebted to my friends Col Raja Mohammad Aslam, my teacher Prof. Mubarik Ahmad Ansari, who read the proofs. I am thankful to the group of students of the Jamia Ahmadiyya Canada who typed this manuscript as a gesture of their love and affection to the outgoing Ameer Maulana Naseem Mahdi, who had offered to get the manuscript typed by volunteers. I do not know even their names but they have done a tremendous job. Raja Anwar Ahmad also instructed me about some technicalities of the typing on the latest computer program and saved me a lot of trouble.

I am grateful to my friend Air Marshal Zafar Ahmad Chaudhry who provided me the copy of the letter which Sir Zafrulla wrote to the Editor of the Pakistan Times, Lahore as rejoinder to Z.A.Suleri's editorial note. My student and friend Brig(R) Mohammad Latif took pains to dig out the original required Pakistan Times issues from the PID archives in Islamabad and sent me through courier service, without this the book would not have been completed. Mr. Safeer Rammah, also a student of mine, of the APNA organization allowed me access to Wali Khan's book Facts are Facts.

Col R Anwar Ahmad helped and encouraged me at all steps during the compilation and editing of the book.

My thanks are due to my wife and children for their cooperation.

## Foreword

I have read with great interest Dr. Perwazi's book, 'Sir Zafrulla's Contribution to the Freedom Movement' giving an account of Sir Zafrulla's achievements for Pakistan. I have not had the pleasure of meeting the author, Dr. Perwazi. He was recently introduced to me by Kunwar Idris, my very good friend of long standing. Dr. Perwazi has done a great service in bringing out facts which show the positive role played by Sir Zafrullah on the national scene for the freedom of the Indian sub-continent.

I had the honour of knowing Sir Zafrulla Khan from my childhood as he was a frequent visitor to my father Syed Maratib Ali's home in Lahore. I was privileged to work in New York as a member of his staff when he led the Pakistan Delegation to the United Nations Assembly in 1947 soon after the creation of Pakistan. Sir Zafrulla served Pakistan in various international assignments. He was the Head of Pakistan Mission to the United Nations in New York, then as the President of United Nations General Assembly, and in the Hague first as a Judge of the World Court and then as its Chief Judge.

During my student days, I followed Sir Zafrulla's various achievements as a Government functionary in undivided India

and after reading Dr. Perwazi's account I now realize the very important role Sir Zafrulla played in influencing various policy decisions of the British Government towards the sub-continent's independence. In Pre-partition India when he was serving as a member of the Viceroy's Council, he vociferously advocated the Indianisation of the civil service, higher judiciary and the leadership in the Armed Forces. This was never known to us till official papers to the British Government were released.

I had the privilege of working on his staff, when Sir Zafrulla led the first Pakistan delegation to the U.N. General Assembly in New York in 1947. This was the session when the debate on Israel's recognition was raging in the United Nations. The Arab nations soon realized that Sir Zafrulla was the best advocate for their cause and he pleaded their case with great commitment. For years thereafter, the Arab countries from Morocco to Saudi Arabia were beholden to his service for Palestine and the Palestinians.

Sir Zafrulla Khan was chosen by the Quaid-e-Azam to present Pakistan's case to the Boundary Commission for the Punjab. During the Boundary Commission sessions, Sir Zafrulla stayed at our home in Lahore and my father provided him all the necessary support for the conduct of his very important mission.

In recognition for his outstanding ability and patriotism, Sir Zafrulla served Pakistan in various capacities and was chosen by the Quaid-e-Azam to be the first Foreign Minister of Pakistan.

Sir Zafrulla honoured us with a visit to our home on almost every visit he made to Lahore while he was serving abroad.

After retirement when he finally decided to move back to Pakistan permanently, my wife and I frequently visited him at his home and received tremendous warmth and affection from him.

Sir Zafrulla had a fantastic memory and was greatly interested in Urdu and Persian poetry. He is one of the finest sons that our soil ever produced.

Syed Babar Ali.

70 FCC Gulberg,  
Lahore.

I started my Urdu book "Sir Zafrulla's Contribution to the Freedom Movement" from the period when he was elevated to the Bench of the Federal Court of India, from January 1942 to June 1947. Main source of the information were the Documents of Transfer of Power in India, released by Her Majesty's Government. Since then a lot of water has gone down the drain and so many new theories propped up. So I decided to begin this narration from the beginning of his political career as described by himself to the Columbia University Oral History department.

Q: May we now turn to the path of your political career from the time you were elected to the Punjab Legislature in 1926?

Khan: During the period that we have dealt with so far, I was a minor figure on the scene, an apprentice, a pupil gradually taking up, as it were, the position of a lieutenant, of Sir Fazle Husain, especially from the time I was elected to the Punjab Legislature.

The Montagu-Chelmsford Scheme of Reforms under which those legislatures had been set up had provided that at the end of ten years, after the working of the system of Diarchy had been in operation long enough to be evaluated, the position would be reviewed by a Royal Commission, who would report on the working of the whole system and make recommendations as to



what should be the next stage. But as political thought in India was getting impatient for the next stage of constitutional advance, it was expected on all hands that the appointment of the Royal Commission would be announced during the fall of 1927.

During the 1927 summer session of the Punjab Legislative Council, held at Simla, the Muslim members of the Unionist Party decided to send someone to England who should get in touch with leading British Statesmen and Members of Parliament and explain to them the Muslim position with regard to the next stage of constitutional advance. At the suggestion of Sir Fazle Hussain their choice fell on me, and I was asked to proceed to England for that purpose. I arrived in England towards the end of September. The Assembly of the League of Nations was then in session in Geneva and Sir Fazle Hussain himself had proceeded as leader of the Indian Delegation to Geneva, before I set out on my journey to London. I stopped on the way in Geneva, spent a day with him and with the Maharaja of Kapurthala, who was a member of the Delegation. A very pleasant day it was. I then went on to London where I began to make contact with British statesmen and prominent Members of Parliament.

I had spent two or three months in London in 1924, so that my contacts were not entirely new. I had met several people then and it was comparatively easy for me to get in touch with them and through them with others. I was still in England when the appointment of the Royal Commission was announced, which later got known as the Simon Commission.

It would perhaps be useful to explain that on safeguards, so

far as the constitution was concerned, the Muslims at that time insisted upon two particular features being retained: one, that in Provinces in which they were a minority, they should have weight age in representation in the Legislature so that they could make an effective contribution, whether in support of the Party in power or in the opposition, as the case might be. And, secondly, that the system of separate electorates, that is to say, the system under which seats in the Legislatures were reserved for each community and were filled by members elected by that particular community should be continued.

I do not know whether I was able to achieve very much, but I know that it was extremely good training for me, to meet all those prominent people in British public life and to put the Muslim case to them. They all listened: some were interested, asked questions and criticised; and some, I have no doubt, were bored. The Royal Commission came out to India at the end of 1927 and again in 1928. The 1927 visit was an exploratory one, to get a bird's eye view of conditions and problems. But the personnel of the Commission had aroused a great wave of not only disappointment but resentment in India. All sections in India had hoped that the Commission would be composed of both British and Indian members, but it turned out to be an entirely British Commission, and the membership was very, very conservative indeed. The Chairman was Sir John (later Lord) Simon, who was then a liberal in politics and subsequently became a conservative, but who was by temperament a very, very conservative type of man, very able, indeed one of the ablest English men of his time, but a very cold personality with a very sharp intellect, with no hint of warmth for any cause or

individual. Major Attlee, as he was then called and who subsequently became Prime Minister, was a member, and so was Mr. Hartshorn of the Labour Party. There were three or four other completely colourless members. The Commission thus, in effect, was a one-man commission, for Sir John Simon was, intellectually, head and shoulders above the rest of them. It was suspected by Indians that all this was done deliberately so that the report should be a one-man report.

It looked at one time as though the Commission would be completely boycotted in India, and to a large degree it was. The absence of Indian representation on the Commission was fatal but an attempt was made to soften the blow by arranging that when the Commission arrived in India on its second visit, it would have associated with it, a committee elected by the Central Assembly and during its visit to each Province also a provincial committee elected by the Provincial Legislature. That did not, however, meet the wishes of the people.

The Central Assembly set up a committee; and so, in due course, did the Punjab Legislative Council. Sir Sikandar Hayat Khan and I were both members of the Provincial Committee, which was composed of seven members. We chose Sir Sikandar Hayat Khan as our Chairman.

We sat with the Commission when it visited the Punjab. We took part in all the proceedings, the examination of witnesses, etc. but we wrote our own report as did the Central Committee and each of the other Provincial Commission. In any case, again, it was an excellent piece of training to be associated with these eminent people that came from England, and those

who were members of the Central Committee and of our own committee.

I might mention that a move had been made behind the scenes, which was attributed to Sir Fazle Husain who was himself at that time an Executive Councillor and not a Minister - I never checked up on it - that the Provincial Committee that was to be elected should contain the three Indian Ministers, but this attracted little support and no Minister was elected to the committee.

The Unionist Party had always followed the line that while the objective was the same everywhere - to march forward to complete responsibility and independence as quickly as possible - there were two distinct methods which could be pursued to achieve that purpose: one, to attack and fight from the outside; and the other, to push forward through criticism, persuasion and co-operation. The Unionist Party while recognizing that both were necessary and, indeed, were complementary to each other, had chosen the latter.

The Commission made its report in due course, and it became a "best-seller," especially the first volume, which was descriptive of the conditions and institutions and of their historical background and development. It was an excellent piece of work. But the recommendations were very disappointing; they did not find support anywhere. So that the Commission's Report was, in that sense, stillborn. It is still a valuable document for the constitutional historian, but beyond that it did not have any effect at all. The feeling of disappointment and frustration was so deep and widespread in

India that the British Government soon announced that a Roundtable Conference would be called in London to deal with the Constitutional problem. The announcement made no mention of the Commission's report. It was completely bypassed and became a dead letter.

In the fall of 1930, the first Roundtable Conference was convened. It met in St. James's Palace. It opened with great pageantry. There was the British section, in which all parties were represented. There was a whole galaxy of Princes, representing the Princely order of India. Then there were representatives of the various communities and interests of India and Burma.

We had some very eminent members among the Muslim representatives. There was, of course, His Highness, the late Aga Khan, who was not only leading the Muslims but was generally acknowledged to be, if not the leader of the whole Indian continent, the most eminent member of it. Everybody treated him with great deference. He did not make many speeches but his counsel was invaluable for us and he provided the opportunity of contacts which were extremely useful and indeed essential.

Then there were Sir Muhammed Shafi, Mr. Jinnah, Sir Syed Sultan Ahmed from Bihar, the Nawab of Chhatari from the United Provinces, and Maulana Mohammed Ali and I was one of the junior members.

At the very beginning, one question was got out of the way. The Burmese representatives put forward a demand that they wished Burma to be separated from India and to have its own constitutional framework and make its own way towards independence. That was conceded. So that, from then onwards, the Burmese section did not sit with the Indians; they had their separate discussions.



The concept of an All India Federation, including the British Indian Provinces and the Princely States, was put forward and was generally accepted; but, of course, a whole lot of problems had to be cleared up and resolved.

Mr. Ramsey MacDonald was then Prime Minister, at the head of a Labour administration. Between the first Roundtable Conference and the second Roundtable Conference, in 1931, an economic blizzard struck Britain and the pound sterling had to go off gold. Mr. Ramsey MacDonald found himself under the necessity of forming a coalition government and thus the Conservatives came into the government. During the first Roundtable Conference, Mr. Wedgewood Benn, subsequently, Lord Slansgate, was the Secretary of State for India. By the time the second Roundtable Conference convened, that office had passed to Sir Samuel Hoare, subsequently Lord Templewood. From then onwards, Sir Samuel Hoare became the principal architect of the scheme that emerged from the three Roundtable Conferences, first in the shape of the Government White Paper and then in the Report of the Joint Select Committee of both Houses of Parliament.

The second Roundtable Conference had this great distinction, that between the two conferences, Lord Irwin, later Lord Halifax, who was then Viceroy, had been able to persuade the Congress, who had boycotted the first Roundtable Conference to participate in the second, and the Congress chose to send only a single delegate in the person of Mr. Gandhi, who was indeed a host in himself, universally respected, not only in India but also in England and in other parts of the world. It was, however, realized only during the actual working of the

conference that, however respected and able an individual might be, it is a mistake for a strong and powerful party to be represented only by one individual in a conference. True, no decision was taken by counting of heads, and, therefore, it did not matter very much that a single individual who was backed by all the prestige and weight of his party represented it; but there was a psychological factor involved. When a question was being discussed, one person, whatever contribution he had to make, could make it in one intervention or two or three, and if the representatives of the other parties and interests did not see eye-to-eye with him, and their numbers were large and if they spoke only once each, his view was smothered under the avalanche of opposition.

Another development which took place during the second Roundtable Conference was the attempt by Mrs. Sarojni Naidu to bring the Muslims and Mr. Gandhi together so that, if possible, an understanding might be reached between them with regard to what was known as the communal problem, and a common stand could be made in support of whatever might be agreed upon as the immediate objective.

During the Roundtable Conferences from 1931-33, a group of zealous students, studying in London, were actively involved in canvassing for a Muslim Free land and Ch. Rehmat Ali, had even given it a name, PAKISTAN. The next question and its answer precisely describe the real implications.

“Q: Sir, would you tell us something about Chaudhary Rehmat Ali and his attitude towards Pakistan?”

Khan: I knew Chaudhary Rehmat Ali very well when he was a student in the Islamia College at Lahore, and later when he was a student in the Law College at Lahore. At that time, I was a part-time lecturer in our University Law College. Later, I knew him when he was a student in Cambridge, in the early 1930s when the Roundtable Conferences were being held in London. He used to come up to London and discuss things with some of the delegates. He had associated with him Khwaja Abdul Rahim, who was also at Cambridge at that time. The latter subsequently went into the Civil Service and rose to be Commissioner of Rawalpindi, and then resigned. He is now practising at the Bar and is also interested in industry. I might take this opportunity to mention here that when it came to partition later, I found that in the matter of preparation for putting our case before the Boundary Commission, Khwaja Abdul Rahim was the only one who had done any useful work at all by way of collecting and collaborating data on various important factors.

Chaudhary Rahmat Ali and Khwaja Abdul Rahim came to London, and we spent some time together discussing Chaudhary Rahmat Ali's then-scheme of Pakistan. Chaudhary Rahmat Ali has the credit of having invented the name "Pakistan." To my great surprise I found that, at that time he was looking only at the northwest of the subcontinent and was ignoring Bengal altogether. When I pointed out to him that in Bengal there were almost twice as many Muslims as there were in the Punjab, he was extremely surprised, and thought I was being very foolish. In a contemptuous tone he said, "Now, what is it you are saying? Punjab has 56 percent Muslims and Bengal only 54 percent Muslims."

I had to point out patiently, "That's true, Mr. Rahmat Ali, but percent means out of 100. Bengal has 54 Muslims out of each hundred of population. But how many hundreds are there in Bengal?" It took me ten minutes to explain this very elementary fact to him, that as the total population of Bengal was more than twice that of Punjab, 54 percent out of a population more than twice that of the Punjab, gave Bengal more Muslims than there were in the Punjab.

It was then that he began to think of some modification of his scheme, so as to include Bengal as part of it. He was more of a visionary than a man of affairs and was not inclined to attach much significance to the practical aspects of a problem.

His scheme involved separation and partition, but it was based on an exchange of populations, necessitating that the total Muslim population of entire subcontinent of India should go into Pakistan.

I enquired from him who would provide the cost of the

transportation of the enormous number of people affected and of their movable goods, across the subcontinent. His answer was that we would have to organize ourselves and to club together to carry out the operation. My comment was, "Mr. Rahmat Ali, if our economic position were so good as to enable us to carry out this huge operation of an exchange of populations and to pay our share of the cost of the transportation of the Muslims, we would not be doing so badly that we would insist on partition."

He was very enthusiastic and was a very devoted type of person. He was so enamoured of his idea that he could brook no criticism of or opposition to it. I did not speak in opposition to his idea, because at that time the whole thing was so academic, and we treated it as something with which these young undergraduates amused themselves during their leisure hours. None of us, at least in the Roundtable Conference, was at that time disposed to attach much importance to it or to treat it as a practical proposition. But so much was Mr. Rahmat Ali devoted to this idea of exchange of populations and that Pakistan, whether confined only to the northwest or also comprising the northeast, should accommodate within its borders the total Muslim population of the whole of India, that when Pakistan was achieved and put into effect, he was greatly disappointed. He used to apply all sorts of opprobrious epithets to the Qaid-i-Azam lamenting that he had destroyed the whole concept with which Mr. Rahmat Ali had started.

He had settled down in Cambridge, but when he visited Pakistan he was not taken much notice of. Besides furnishing the name he did not play any active part in the promotion or the setting-up of Pakistan. He died soon after partition, a very disappointed man." (1)

Sir Zafrulla has described the so called Pakistan scheme as chimerical and impracticable. Mr. Musarrat Hussain Zuberi, an eminent ICS officer who later served Pakistan, has tried to vindicate his stand through Joint Select Committee proceedings record. I think it appropriate to add Mr. Zuberi's reference from his autobiography *Voyage Through History*. He writes:

"The canvassing amongst the delegates was left to Rehmat Ali. He, in 1933, not only gave the contemplated country, sovereign and independent, a name, he issued his fervent appeal "Now or Never" on 28th Jan., 1933 and formally announced formation of Pakistan National Movement with its weekly newspaper Pakistan. The pamphleteer, the zealous crusader, the confident propagandist, Rehmat Ali's discomfiture must have been profound, when, for all his troubles and labor, had his scheme described as "chimerical and impracticable" when the matter was taken up in the Joint select Committee on Indian Constitutional reform. The question and answers given in the minutes of evidence deserve to be better known:

Sir Reginald Craddock: "If any of the delegates or the witnesses would like to answer, will they tell me whether there is a scheme for federation of provinces under the name of Pakistan?"

Abdullah Yusuf Ali: "As far as I know it is only a student's scheme; no responsible people have put it forward".

Sir Reginald Craddock: "They have not so far, but, as you say, you advance very quickly in India and it may be, when those students grow up it will be put forward; that scheme must be in minds of the people, anyhow".

Sir Zafrulla Khan: "What is the question?"

Sir Reginald Craddock: "I wanted to know whether the



witnesses had acquaintance with a scheme, which was drawn up for, what is called Pakistan?"

Sir Zafrulla Khan: "We already had the reply that it was a student's scheme and there is nothing in it. What is the further question?"

Mr. Issac Foot: "What is Pakistan?"

Sir Zafrulla: "So far we have considered it we have considered it chimerical and impracticable. It means the federation of certain provinces."

Sir Reginald Craddock: "I have received communications about the proposal of forming certain Muslim States under the name of Pakistan."

Dr. Khalifa Shujauddin: "Perhaps it will be enough to say that no such scheme has been considered by any representative gentlemen or association so far" (2)

(Voyage through History, volume II page 369.) (Proceedings of the Joint Select Committee. On 1st August. (Session 1932-33), Vol. II (P. 1496).

The most avid allegations came from Khan Abdul Wali Khan, the Leader of the NAP, who alleged that the Pakistan scheme was a British Scheme and the Muslim League was just a tool in British hands. Khan Abdul Wali Khan, after having consulted the India Office records came up with the theory in his book Facts Are Facts. The relevant part of Wali Khan's allegation was:

"The above schemes were being hatched by the Muslims. The final decision rested with the British. When the British saw that their objectives could not be met by the schemes presented

by Sikandar Hayat Khan or the Muslim Working Committee, they unilaterally rejected all the proposals submitted by the Muslims. Chaudhri Zafrulla, a member of the Viceroy's Executive Council, was asked to submit a map of two dominions on that subject, on 12 March 1940. Viceroy Lord Linlithgow wrote to the Secretary of State for India:

Upon my instruction Zafrulla wrote a memorandum on the subject. Two Dominion States. I have already sent it to your attention. I have also asked him for further clarification, which, he says, is forthcoming. He is anxious, however, that no one would find out that he has prepared this plan. He has however given me the right to do with it what I like, including sending a copy to you. Copies have been passed on to Jinnah, and I think to Sir Akbar Hyderi. While he Zafrullah, can not admit its authorship, his document has been prepared for adoption by the Muslim League with a view to giving it the fullest publicity.

The Viceroy explains further. Since Zafrulla was a Qadiani he had to be cautious. The Muslims would become irritated if they found that the scheme was prepared by a Qadiani. The Viceroy said that Jinnah had been given a copy to make the Muslim League adopt it and publicize its contents. Sir Akbar was given a copy because he was responsible for fund raising. The dates take on a special significance. The Viceroy's letter to the Secretary of State was written on 12 April 1940. The Pakistan scheme had been dispatched earlier. Twelve days later the Muslim League adopted this very proposal at their Lahore Annual Meeting. It was called Pakistan Agreement.

Sir Zafrulla's term on the Viceroy's Executive Council was expiring in March. Due to his loyal service, however, the term was extended. Two days after the Muslim League had adopted this proposal, on 25 March 1940. "(3)

(Facts are Facts. By Khan Abdul Wali Khan) PP 40.41.  
[Enclosure 1.]

In the first instance Khan Wali Khan has not been truthful in saying that Sir Zafrulla could not claim the authorship of the memorandum because he was a Qadiani. No such reference was ever made by the Viceroy in his letter to the Secretary of state for India Lord Zetland, which is produced to keep the record straight:

Para 15 of the letter:

"I sent you by the last bag a copy of Zafrullah's note on Dominion Status, which I remarked purported to be a statement of the position from, the extreme point of view. I introduced that qualification, because I had not at that time had an opportunity of discussing its precise nature with him, and certain of the propositions contained in it, were they to appear formally under the name of a Member of my Council, might I think, have justified a description in those terms. I asked him yesterday to put me a little more in picture and he told me first that this is a first draft only; secondly that provided he is protected on that point and that the paper is not used publicly, I may do what I like with it, including sending a copy to you, thirdly that copies have been passed to Jinnah and I think to Hyderi and fourthly THAT WHILE HE, ZAFRULLAH, CAN NOT OF COURSE ADMIT ITS AUTHORSHIP, HIS DOCUMENT HAS BEEN PREPARED FOR ADOPTION BY THE MUSLIM LEAGUE WITH A VIEW TO ITS BEING GIVEN THE FULLEST PUBLICITY. I cannot claim even yet to have had time to absorb it fully, and I would prefer to suspend my comments on it until later. But it is a substantial and trenchant piece of work and I

shall be greatly interested in your own reaction to it."(3)

The sentence "Zafrulla cannot admit its authorship" refers to his being a member of the Viceroy's Executive Council. His faith matters are not referred to.

The memorandum written by Sir Zafrulla was a statements of real facts prevailing in India, therefore is reproduced here for record.

## PART I

## Memorandum

### INTRODUCTORY

Dominion Status has long been accepted as the ultimate objective of Indian constitutional advancement. The Lord Privy Seal, Sir Samuel Hoare, in his speech in the House of Commons on the 26th October 1939, made it perfectly clear that there were no separate types of Dominion Status and that by the expression "Dominion Status" was meant the kind of Constitution that has been in operation in the British Dominions. Since then, His Excellency the Viceroy, in his speech to the -Orient Club in Bombay on the 10th January, has explained that by Dominion Status with reference to India is meant Dominion Status of the Statute of Westminster type. He has also emphasized that this is no longer a mere ideal or distant objective to be achieved at some uncertain date in the future but that it is the immediate objective of British policy in India. That is to say, the objective of British policy today is the setting up of responsible government in India of the type of Dominion Governments within the shortest practicable period of time. His Excellency has coupled this declaration with the advice that an All-India Federation would afford the swiftest means of progress towards the achievement of full Dominion Status. Mr. Gandhi has stated that this declaration does not meet the Congress demand, which is that India shall be completely independent at the end of the war and that the constitution of this independent India shall be framed by a Constituent Assembly on which should be represented all communities and interests in India. Mr. Gandhi



has said that the fundamental difference between His Excellency the Viceroy (as representing His Majesty's Government) and himself (as representing the dumb millions of India) is that His Excellency assumes that the Dominion constitution of India would be settled in consultation between the representatives of Britain and of India; and Mr. Gandhi and the Congress demand that it should be settled between the representatives of the different communities and interests in India alone and that the British should have no hand in framing and settling the provisions of that constitution. So far 'as the Muslims are concerned, the prospect is disquieting enough whichever of these two positions may ultimately be accepted.

### COMPLETE INDEPENDENCE

2. We have no right to question the sincerity of those who insist that a declaration accepting India's status as a completely independent country should precede any effort to frame the constitution itself. We cannot help thinking, however, that by complete independence is meant something which would not correspond exactly to the dictionary meaning of this expression. It has been stated on good authority that during the Second Round Table Conference in London, in 1931, Mr. Gandhi, in the course of conversations which took place between himself and the Muslim representatives, defined complete independence as "including full control of defense and finance". Now, if complete independence means independence like that enjoyed by Italy or Russia or China, there would be no need, to define it as including full control of defense and finance. On the other hand, surely it is realized that complete independence in its dictionary meaning without any limitations would not be worth a week's purchase at this stage. This is so evident that we cannot imagine that

anybody having the good of India at heart would today insist upon India attaining complete independence of that type. It would be futile to enter into an investigation today as to who is responsible for India finding itself in such a helpless condition with regard to its defense, in case the British connection were put an end to, but the unfortunate fact is that India would actually find itself in a most helpless condition. And so long as it is not able to provide adequate means of resisting such aggression as it might be subjected to from certain directions, it would be suicidal to insist upon complete independence. Mr. Gandhi says that once India is free, it would, live on terms of peace and goodwill with its neighbors and would have nothing to fear from them. That is an admirable sentiment, but unfortunately hopes based on that sentiment have been continuously, frustrated and belied by history. To go no further back than the latter half of the last year, we know that Poland had given no real cause for offence to Germany nor had Finland furnished any real or even apparent cause for aggression to Russia, and yet Poland was wiped out of existence during the course of a few weeks and Finland is now fighting desperately to preserve its existence. If human nature were to be revolutionized and were to become what Mr. Gandhi evidently in all sincerity desires it should become, there would scarcely be any need for declarations and constitutions and safeguards. Mankind would live at peace with each other and there would be nothing but goodwill and happiness. We have, however, to accept human nature as it is and as it manifests itself continuously in action and have to make provision for large sections of mankind on that basis. When the millennium arrives; we can easily discard safeguards and constitutions which have been devised for the regulation of the conduct of imperfect mankind. Mr. Gandhi and the Congress however, have had ample opportunity of providing a convincing

demonstration of, these principles, so ardently professed by Mr. Gandhi, within India itself. If Mr. Gandhi could persuade the Congress and the majority community to adopt the principles which he hopes will be accepted by all mankind the moment India is free, all the communal conflict, which is agitating India from one end to the other, would come to an end. For over two years, eight out of the eleven Provinces of the country have been administered by Congress Governments. Surely, the result should have been peace and goodwill between the communities and complete joy and happiness throughout the land. That much-to-be-desired state has unfortunately not materialized. The minorities, particularly the Muslims, are far more apprehensive today with regard to their future than they have ever been in the past. Whether their grievances are real or are only fancied, the fact is that they consider their future in this country as completely overshadowed by the fear of ruthless domination by the majority. The Congress have had an excellent opportunity of putting into practice the principles professed and advocated by Mr. Gandhi in such beautiful and attractive language and yet the result has been exactly the opposite of what should have been expected. We are, therefore, firmly of the view that it is futile to talk of complete independence till we have developed and perfected our means of defense against any possible aggression with which India may be threatened.

### CONSTITUENT ASSEMBLY

3. As we have said above, the fundamental difference between Mr. Gandhi and His Excellency the Viceroy at this stage is the question of the machinery which should be set up to frame and settle the new constitution of India. Mr. Gandhi has given his full support to the Congress demand for a Constituent

Assembly. We are told that this Constituent Assembly will represent all communities and interests in India. We are also told that somehow or other the constitution framed by it will have the support of, and will give satisfaction to, all communities and interests in the country. We are afraid, however, that this is again one of those ideals very much to be desired but not at all likely to be achieved and we must state with all the emphasis at our command that the slightest indication of readiness on the part of the British to accept any such demand would amount to treachery towards India. Great Britain has certain vital interests of its own in India and if the British people choose to sacrifice these interests, it is their own affair and they are at liberty to do what they like in that respect. But Great Britain also has trustee obligations towards India and if it abandons these obligations, it would be guilty of a breach of trust of the worst type inasmuch as it would then be sacrificing in the most callous manner the interests of a very large section of humanity. A Constituent Assembly of the type demanded by the Congress will never come to any agreement and would only serve to exacerbate feeling between the different sections of the people in India and is bound ultimately to lead to civil war. Any disposition, therefore, on the part of the British to give countenance to this demand must be interpreted as a direct incitement to civil war in India. We can think of no device better calculated to set the rival communities and interests in India by the ears than this device of a Constituent Assembly which would be entrusted with the task of framing the future constitution of India. The results of such an Assembly being set up are too appalling and horrible to contemplate and we earnestly hope and pray that this demand will find no Support or echo outside Congress circles. The insistence of the Congress upon resort being had to such a device is the surest proof, if proof were still needed, that the Congress is



aiming at the setting up of a totalitarian Hindu State in India and that attempt must be resisted to the last by the minorities in India as well as by the British in the interests of India and of humanity.

We fear that the problem of framing a constitution for India is not so simple as even some British statesmen appear to imagine. We regret to have to state that the ignorance of the average British statesman of conditions in India is complete and profound and the danger is that, as the result of the strains and stresses to which Europe has been subjected during the last seven years and the idealisms to which these strains and stresses have given birth in certain quarters, Great Britain may commit itself with regard to the future of India to a position from which retreat may become impossible and any modification of which may become impracticable. We are very much afraid that the Congress is today playing a game similar to the one that they played nearly three years ago when the question of taking office in the Provinces under the new constitution arose. The Congress then refused to play till declaration after declaration was elicited from the Governors and the Governor-General and the Secretary of State for India, and the hands of the Governors were so securely tied that the Congress became assured of complete domination in the Provinces in which they commanded a majority in the Legislatures and was able to ride rough-shod over everything with complete impunity so that the safeguards were nullified. The same game is going on today. The Congress is forcing the Viceroy and the Secretary of State to make declaration after declaration which would irrevocably commit the British, to the grant of Dominion Status as soon as the war is over. Indeed, we fear that the declarations already made have placed Great Britain in that position. The hearts of the Congress High Command must have jumped with joy on reading the

Viceroy's speech to the Orient Club in Bombay on the 10th January. They go on pretending, however, that the position is not good enough. We, on the other hand, are convinced that from the point of view of the Muslims the implications of the Viceroy's speech are such that the position could scarcely be worse and it, therefore, behoves the Muslims to take careful stock of the position and to make their own attitude clear lest their case should go by default.

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### DOMINION STATUS

5. The Congress have been offered Dominion Status of the type of the Statute of Westminster. They have proclaimed that the offer is not worth accepting. Whatever the ultimate settlement may be, it is obvious that India could not now be offered anything less than full Dominion Status. And what does that offer imply? If it means anything at all, it means that the Indian Central Legislature would cease to be a subordinate legislature and would become a sovereign legislature with all the consequences that would flow from that change. Defense and external affairs must cease to be reserved subjects. (The Ecclesiastical Department would also be transferred but it is too small a matter to worry about and our omission to make any reference to it is deliberate.) It also means that all special powers and responsibilities of the Governor-General and 'of the Governors must disappear and they must occupy the same position in India as they occupy in the Dominions: That is to say, they must become picturesque symbols to be brought into use mainly on ceremonial occasions. Indeed, the Governor-General and the Governors must be appointed by His Majesty and the terms of their Instruments of Instruction must be settled on the advice of the Dominion and Provincial Ministers respectively



and not on the advice of His Majesty's Ministers in Great Britain. The Central Legislature, by whatever name it is described, would have the power to legislate for the whole of the central field without check or restriction and would be at liberty to repeal and amend such Acts of Parliament as apply to India. The Central-Executive would be completely responsible to the Central Legislature and would exercise complete control over the armed forces of India. At any time; after the Dominion constitution comes into operation, India would be at liberty to part company with the remaining British Commonwealths, to proclaim its' complete independence and to set up a Constituent Assembly or any other device that may appeal to the Central Legislature to frame a completely new constitution for India. In other words, the interval between the setting up of a Dominion Government of India and the proclamation of complete independence and the setting up of a Constituent Assembly such as the Congress have in mind, need be no greater than six months. This confirms us in our view that the Congress are holding back only so long as there is some doubt in their minds whether British statesmen are sincerely and irrevocably committed to immediate Dominion Status for India after the war. Once the Congress have succeeded in binding His Majesty's Government securely to a declaration of that character, without any reservations they will accept that declaration and demand that 'India should be invested with full Dominion Status at the earliest possible moment, and this demand the British will be in honor bound to satisfy. It is inherent in a Dominion constitution of the Statute of Westminster type that the Dominion Legislature is at liberty to convert a Dominion constitution into a republic or a dictatorship or any other type of sovereign government that appeals to it.

6. For us, therefore, the prospect is already full of alarm and

apprehension. Any Central Legislature that may be set up in India must be predominantly Hindu and is bound to retain that character for any length of time that can be foreseen. The investment of India with Dominion Status, therefore, means in plain language that sovereign authority will be vested in the hands of an irremovable and practically irreducible Hindu majority. The inclusion of the Indian States in an All-India Federation will not serve to lighten Muslim fears. On the contrary, it is bound to enhance them as an overwhelming, majority of the population and Rulers of Indian States are Hindus. It may be retorted that a scheme of safeguards for the minorities would be an integral part of the Dominion Constitution and of the constitution of a free and independent India and that this ought to reassure the minorities, including the Muslims. We are very much afraid that this kind of reassurance amounts to no more than the invitation of the spider to the fly in the nursery rhyme. As we have shown above, however complete and elaborate may be the scheme of safeguards which may be embodied in the constitution, there would be nothing to prevent the Sovereign Dominion Legislature to repeal it or amend it out of all recognition within a year of the new Constitution being put into force.

### THE COMMUNAL PROBLEM

7. It is extremely difficult, if not impossible, for people who do not possess an intimate knowledge of conditions in India to appreciate the depth and many-sidedness of what is called the "communal problem". British statesmen are apt to imagine that the communal problem in India presents only difficulties of the kind with which minorities are faced in different parts of Europe, though perhaps on a larger scale as the numbers involved are far

greater. This is a complete misconception. The minorities' problem in Europe has, since the Great War become complex enough and difficult enough but it bears no comparison with the complexities and difficulties presented by the communal problem in India. The Indian problem goes much deeper and has many more ramifications than the problem of the minorities in Europe. We must first realise that India is not a country but a continent or, as is more commonly described, a sub-continent. Its geographical position no doubt separates it from the rest of Asia but that fact alone is not sufficient to constitute it into one country or one State. There are many more varieties of race, creed, language and culture within India than are to be found in the whole of Europe. There is more in common between an English peasant and a Muslim peasant in the Punjab than there is between the latter and a Hindu peasant in Madras. As a matter of fact, the only thing common between the last two is their occupation; in all else they are complete strangers. Their faiths, races, languages, culture, social habits and intellectual outlook are utterly different. And the difference does not stop there. If that were all, the difficulties inherent in the problem would not be so great nor so insurmountable. The very distance which separates the two would prevent any difficulties from arising. It is the intermixture of the population which yet refuses to mix that creates most of the complexities and difficulties. Throughout India Hindus and Muslims live in close physical proximity, to each other and yet in water-tight compartments; and there is very little social intercourse between the two. An average Muslim in Punjab has a pretty good idea how an average Muslim in the United Provinces or in Bengal or in Madras feels, lives and reacts to different kinds of influences but has not the faintest notion how his Hindu neighbor next-door to him lives, feels and reacts, and this is equally true of the Hindus. We suspect that a

Hindu knows, if possible, even less about his Muslim neighbors than a Muslim knows about his Hindu neighbors. For there is at least this difference that an orthodox Muslim may invite a Hindu friend to his house and offer him such hospitality as he is able to afford without doing any violence either to the tenets of his faith or to the social code which he ordinarily observes. On the other hand, orthodox Hindu may not accept such an invitation or reciprocate in the same way without contravening the injunctions of his faith and running the risk of being placed outside the pale of his caste. This attitude of Hindus towards the followers of all alien faiths has set up an insurmountable barrier between the different communities inhabiting the country. It is true that a number of Hindus who have come under the influence of Western culture have freed themselves to a greater or lesser extent from these restrictions but, that really affords no alleviation of the situation as the number of these people is infinitesimally small as compared to the total population of India and the influence of such people even in their own circles is negligible. The attitude of the ordinary Hindu towards the Muslims is that Islam has stolen: these millions from the fold of Hinduism and that these millions must be brought back into the fold, and this is what alarms the Muslims most. Indeed, no secret is made of this aspiration as is clear from the frequent utterance of Dr. Moonje. If these utterances meant no more than that Hinduism must make an effort at propaganda and try to win the Muslims back to the fold of Hinduism by expounding the inherent beauties and excellences of the Hindu faith, nobody could have the slightest objection to them, What is meant by these bellicose declarations, however, is that, the Muslims must be forced to come back to the Hindu fold and no more Hindus must be permitted to accept Islam. Dr. Moonje has recently stated that if the Hindus had the power they would prohibit



conversion to Islam by law and this furnishes the key to the core of the problem.

8. We wonder whether it is realized outside India that in this unfortunate country every person can be labeled a Hindu, a Muslim, a Sikh, a Parsee, or a Christian from his or her very name. Once you know a person's name, it is never necessary to enquire into which communal category that person falls. That does not only serve to keep up an effective barrier between the communities but furnishes far greater scope and many more opportunities for discrimination and even persecution than would be available in other countries, however wide the gulf may be between the different communities in those countries. There are instances of Muslims retaining as surnames, names which were originally Hindu caste names and, more recently, even retaining their personal Hindu names after conversion to Islam so long as there is nothing idolatrous in the Hindu names, but there is not a single instance to the contrary. If a Hindu were to adopt any of the names which are common amongst the Muslims, he would cease to be regarded as a Hindu by his caste fellows and his co-religionists, however orthodox he might continue to be in the practice of his religion. So that, it is not merely a case of communal differences and outlook which have to be adjusted and for which allowance must be made, but a case of geographical intermixture of populations, sections of which owe allegiance to entirely different faiths, cultures and social systems and between the members of which no real mixing is possible. There can be no inter-marriage between Hindus and Muslims. It may be said that marriages between Hindus and Muslims may take place under the law of civil marriage, but that would not be a correct statement inasmuch as parties to a civil marriage must declare that they do not follow any particular faith and therefore,

before the marriage takes place, they must cease to be Hindus or Muslims. As a Hindu is prohibited by his faith from eating at the same table with a Muslim or even in the same room, we have the curious spectacle of separate Hindu and Muslim refreshment rooms being provided at the principal railway stations for the convenience of Indian passengers. This is due not to any objection on the part of the Muslims to sitting down at a meal at the same table with Hindus but to the objection of the Hindus that they cannot sit down to a meal in the same room with a Muslim. A Hindu will not drink water if the utensil in which it has been kept or is being served is touched by a Muslim. When a train stops at any northern Indian railway station in the hot weather, cries are immediately heard of "Hindu water" and "Muslim water". There is also, of course, "Hindus' bread" and "Muslims' bread". As large sections of Hindus do not eat meat, one sometimes hears the cry "Muslims' meat" followed immediately by the cry of "Hindus' bread", and Muslims often convert it into saying that "Muslims' meat is Hindus' bread" which perhaps is a very apt description of the actual state of affairs, for, apart from serving as social barriers, these restrictions enjoined by Hinduism result in practice as a great commercial handicap upon the Muslims. A Hindu will not buy eatables from a Muslim as his faith prohibits him from doing so and will very seldom buy anything else from a Muslim, as doing so would be repugnant to his social and commercial instincts. On the other hand, a Muslim suffers from no such restrictions and every Muslim in all parts of India throughout his life buys far more from the Hindus than from the Muslims. The result is that an enormous amount of money pours into Hindu pockets out of the very slender resources of the Muslims and very little of it ever finds its way back to the Muslims. This is a stream that flows only in one direction and does not even trickle back in the



other direction. To emphasize this aspect of the question, let us draw attention to an incident which is of very frequent occurrence in Northern India. As a train arrives at a busy station, passengers begin to call for porters to carry their baggage outside the station. This habit is far wider spread, in India than in Europe as the ordinary tip to a porter for one load per trip is only one penny. A Muslim porter offers his services to a Hindu passenger and often is the offer rejected for the reason that the passenger's baggage contains eatables and he cannot let a Muslim porter handle the baggage! These and similar incidents are so common and so much a part of the social relations or rather proof of the lack of social relations between the communities that the Muslim porter does not even feel aggrieved. He knows that if there are eatables in the baggage of the Hindu passenger, he cannot be permitted to handle the baggage. On the other hand, it is not necessary to enquire from the porter whether he is a Muslim or not as, apart from names, a Muslim can be recognized from his very face and mode of dress and vice versa. So that, not only do these differences, divisions and barriers exist but are written large on everybody's countenance. There are large quarters in big towns in India where it is impossible for a Muslim to rent accommodation, let alone to be permitted to acquire property. There are large commercial Associations of a non-communal character on the surface, the membership of which it would be utterly impossible for a Muslim to acquire, however competent and qualified he may be with reference to the objects of the Association. All sorts of devices are resorted to keep Muslims out from educational institutions, Government service, commercial institutions and activities of a commercial or industrial character. And the evil does not stop there. It permeates the Executive Departments of Government and, what is far worse, even the Administration of Justice. We could go on

citing illustrations with reference to these last two aspects and nauseam but we refrain from doing so, as our object is to draw attention to the nature of the problem and not to expose such aspects of it as would shock and horrify outside opinion and would consequently incite the majority community to further persecution of and discrimination against the minority. What we have said should suffice to show to those interested in studying the problem that the evil has penetrated wide and deep and that the ordinary platitudes in which politicians and statesmen in Europe are apt to indulge in these matters would afford no solution of the problem in India. If anybody should feel interested enough to go further into these matters, we would be quite ready to furnish concrete information which would more than completely bear out what we have stated above. Our object is not to exacerbate feeling but to depict the background against which the problem must be viewed so that the palliatives that we propose (they are, we confess, not in the nature of remedies as no real or effective remedy is really possible for the state of affairs with which we have to deal) may be studied in their proper perspective. We have said enough to show that the problem in India is not one of minorities or communities in the sense in which these expressions are ordinarily understood. The Muslims in India number between 75 and 80 millions, a number far in excess of the population of most of the countries of Europe. They are united to each other by the bonds of a common faith, a common history, a common law, common traditions, a common social code and culture and a common language and literature. As remarked by the Joint Select Committee on Indian Constitutional Reforms, of which His Excellency Lord Linlithgow was Chairman: "India is inhabited by many races often as distinct from one another in origin, tradition and manner of life as are the nations of Europe. Two-thirds of its inhabitants

profess Hinduism in one form or another as their religion; over 77,000,000 are followers of Islam; and the difference between the two is not only one of religion in the stricter sense, but also of law and of culture. They may be said indeed to represent two distinct and separate civilizations. Hinduism is distinguished by the phenomenon of caste, which is the basis of its religious and social system and, save in a very restricted field, remains unaffected by contact with the philosophies of the West. The religion of Islam, on the other hand, is based upon the conception of the equality of man". (Report of the Committee, Session 1933-34, Vol. I, paragraph 2). In short, Muslims throughout India possess and enjoy in common all the characteristics which go to form a nation and scarcely any of these are shared by them with the Hindus. So that when the Muslims claim that they are not a minority in the ordinary sense but constitute a distinct nation., they do not employ a mere figure of speech, but give expression to a reality, and the sooner that reality is accepted as the basis of any settlement between the Hindus and Muslims, the sooner it will be possible to arrive at a practical and acceptable settlement. So long as the leaders of the majority community go on pretending that the communal problem in India is only a side issue, so long will there be no hope of a settlement to which the Muslims can be a party.

### MUSLIM ATTITUDE

9. The Muslims find themselves on the horns of a dilemma. The working of the 1935 Constitution in the Provinces has already brought home to them the seriousness of the dangers to which they are exposed and the prospect of further constitutional advance is bound to enhance those dangers manifold. They are, therefore, faced with the alternative of stoutly resisting any

further constitutional advance till their position is fully secured, or of reconciling themselves to a situation' which is bound to result in the destruction and annihilation of all that which they hold most dear and for the preservation of which they would be, prepared to lay down their lives. The choice is terrifying in the extreme and lays a heavy responsibility upon the leaders of the community. In their despair and distress they have thought of many devices and have even put forward some of them as affording a remedy for the extremely complex and difficult situation with which they are faced. There is, for instance, the Pakistan scheme which; broadly speaking, seeks to divide India into Muslim and non-Muslim parts, the Muslim part being described as Pakistan. An essential feature of this: scheme is the exchange of enormous numbers of the population. One has only to contemplate the expense, misery, suffering and horror involved in any such attempt, on the scale on which it would be necessary in India, to discard the scheme at once. We give the fullest credit to those who are responsible for putting forward this scheme but, with all respect, we are convinced that the scheme is utterly impracticable and would result in nothing but misery and suffering and can, therefore, make no contribution towards the solution of India's problems. Those who have advocated this scheme have looked only, at one side of the picture and have been influenced by the sole desire of safeguarding certain things which the Muslims hold dear without any reference to the practicability or feasibility of the scheme. Another very serious objection to the scheme is that it seeks to confine the progress of Muslim faith and culture in India within certain geographical limits, than which no greater disservice could be done to Islam. It offers no solution with regard to those out of the Hindu population of India who might accept Islam after the country had been divided into these two parts and a

complete exchange of populations had been carried into effect. We do not consider it necessary to enter into a detailed criticism of this scheme as we are, convinced that any critical examination of it carried out by those who are responsible for putting it forward will be sufficient to demonstrate to them the utter impracticability of this scheme.

10. The Muslims must reconcile, to the position that the country is bound to go forward and that they must not adopt an attitude of obstruction in these Matters. We are sure that the Muslims themselves feel that way and have no desire to arrest or retard the constitutional advancement of India. On the contrary, they have in the past given every proof of their anxiety to co-operate in the constitutional advancement of India and have made every possible sacrifice in this cause. They feel, however, that a constitution is a means for securing certain conditions of peace, advancement and happiness for the different sections of the people of the country and that a constitution which does not secure those conditions to all sections of the people fails in its primary object and is not worth having. Indeed, it would be disastrous to put into force- a constitution unless' it guarantees these essentials. Their anxiety, therefore, is to evolve some scheme which should, on the one hand, secure- for India a status equal to that of the free nations of the world and yet should guarantee for the different sections of the population equal opportunities and means of advancement. They have nothing but goodwill for their Hindu brethren and their only anxiety is that the new constitution should bring about a state of affairs in which they can settle down to beneficent co-operation with the other sections of the people of India, so that all sections might be able to advance together.

## SEPARATION SCHEME

11. We have already stated that India is not one country but a collection of countries and that the population of India does not consist of one nation but of at least two nations, and the only real solution which is likely to bring peace to this distracted country is the acceptance of these facts as a reality. We find that Muslim opinion is crystallising more and more in support of some such solution and that, more recently, the scheme that has received the largest measure of support from the Muslims is what we may describe as the "scheme of separation" rather than the Pakistan scheme. The chief difference between these two schemes is that an essential ingredient of the Pakistan scheme is an exchange of populations and that the separation scheme involves no such impossible and impracticable element. Briefly, the separation scheme is that there should be a North-Eastern Federation consisting of the present Provinces of Bengal and Assam, and a North-Western Federation consisting of the Punjab, Sind, North-West Frontier Province, Baluchistan and the Frontier tribal areas. The rest of India may constitute itself into one Federation or into more Federations than one, as it suits itself. The North-Eastern and North-Western Federations will be in direct relation with the Crown and so will be the Federation or Federations constituted by the rest of India. If Burma can be constituted into a separate Dominion, apart from India, there should be no inherent impossibility or impracticability in setting up the North-Eastern and North-Western Federations. No doubt, extensive adjustments would be required for this purpose, but these need not prove insurmountable obstacles. For instance, there will have to be a Customs Convention between the different Federations; there will have to be a Railway Convention governing the interchange of traffic and safeguarding against discrimination. The question



of defense will, no doubt, be regulated by Treaties. The defense of India against any invasion across the land frontiers will become the responsibility of the North-Eastern and the North-Western Federations and the defense of India by sea would become mainly the concern of the remaining Federation or Federations. We have used the expression "mainly" in this connection advisedly as Calcutta and Karachi will obviously be included in the North-Eastern and North-Western Federations respectively and adequate arrangements for their defense would have to be made. The Federations responsible for the defense of India by land and sea would stand in need of extensive financial adjustments inter se. Again, there will have to be a Postal and Telegraph Convention and also a Convention regulating Broadcasting and Civil Aviation and the like. There would also be Treaties securing reciprocal treatment to the minorities in different Federations. The great merit of this scheme is that it does away with any question of the exchange of populations and contemplates the retention in a certain measure of the unity of India in those matters in which unity is essential and would prove beneficent. We would, therefore, appeal with all the emphasis at our commands to our sister communities in India and to the British to undertake a sympathetic examination of the whole problem on this basis and to evolve by common agreement a scheme which should secure the essentials which we have indicated. We have no doubt that Muslim opinion throughout India would rally round this scheme and that it is likely to prove the only satisfactory solution of 'this most troublesome question. There are two obvious objections to this scheme to which we might here advert. One is that, while it secures the Muslim position in North-Eastern and North-Western India, it makes no provision for securing the position and interests of Muslims in the rest of India. We consider that

acceptance of this scheme would relieve the communal tension to such a degree that the apprehensions by which the Muslims are assailed at the present day would be considerably lightened. Also, the treaties providing for reciprocal treatment of minorities in the different Federations would, to a large measure, secure the position of the minorities in the respective Federations. The other objection is that acceptance of this scheme would put an end to the unity of India which has been so laboriously and painfully built up. Our answer is that in a large measure this unity is more apparent than real and that the only aspects of it which are worth preserving are those that have some reality behind them or those aspects would be preserved by means of the Conventions and Treaties to which we have made reference above. We are firmly of the opinion that it would be far wiser and more profitable in the end to recognize the lack of unity where unity does not exist and to provide for its continuance where it does exist than to continue in the attempt to yoke together heterogeneous and conflicting elements, the strain generated by which is bound to result in violent disruption and explosion. We hope, therefore, that wise statesmanship will accept the realities of the situation and try to construct the future of India upon that basis rather than upon the shifting quick sands of false pretence and make-believe.

### ALL-INDIA FEDERATION

12. We are not in a position at this stage to measure the support which a scheme of this kind might succeed in securing from the other communities in India and from Britain. We recognize that the devotion to the principle of All-India unity may in the end prove too strong to permit wisdom and foresight to govern the situation. It is extremely doubtful whether the Muslims would ever be willing to reconcile themselves to an

All-India Federation on the basis of Dominion Status. Of the dangers inherent in this type of Constitution and apprehensions to which they would give rise, we have given some indication in preceding paragraphs. On the other hand, we think that the Muslims should not condemn out of hand any such proposals and that it would be worth while studying this scheme and exploring the avenues along which an agreement between the communities might become possible. We have no hesitation in stating that from the Muslim point of view the alternative, to whatever extent it may be hedged round by safeguards, balances and counter-balances, would not be nearly as satisfactory as the separation scheme. We do not, however, for that reason alone, desire to take up a non possumus attitude and proceed to examine this scheme and to make such suggestions as might perhaps serve to reassure the Muslims and may yet be accepted without difficulty by the other communities : though we fear that in so doing we are taking a serious risk of being misunderstood by our own community who, as we have just said, are extremely unlikely to identify themselves with any such scheme or indeed with any other scheme which does not contemplate the setting up of the North-Eastern and the North-Western Federations.

13. The difficulty with which we are confronted at the very threshold is the one that we have already indicated, namely, that under a Dominion Constitution the Dominion Legislature would become a Sovereign Legislature and the Muslims apprehend that any scheme of safeguards for the minorities, which might be embodied in that Constitution, could be repealed or radically amended by the Dominion Legislature in defiance of the wishes of the minorities. One solution of this difficulty might be that certain parts of the Constitution should be made absolutely rigid and not open to repeal or amendment in any shape or form. This

would be a very simple solution, but, we fear, that this degree of rigidity is bound in the end to lead to serious differences and discontent. Some possibility of modification or amendment must be provided for. This raises the question whether the power to modify or amend that part of the Constitution which deals with the minorities and special interests should continue to vest in Parliament or should be entrusted to the Dominion Legislature itself subject to such restrictions as might reassure the minorities. The Muslims would prefer the first alternative but it might be objected that to that extent the provision would amount to a negation of Dominion Status, as it is inherent in Dominion Status that the Dominion Legislature should be supreme and should have power even to repeal or amend Acts of Parliament operative in the Dominion. The answer to this objection would be that the negation, if any, involved in the acceptance of this suggestion would be at the desire of India and would not be imposed upon India by Great Britain and that, therefore, India might well reconcile itself to it.

If, however, the second alternative is preferred, the minorities must be reassured that, though the Dominion Legislature may be invested with the power of amending the Constitution, the portion dealing with safeguards shall not be open to amendment without the unanimous vote of the representatives of the minorities in the Dominion Legislature which must be confirmed by another unanimous vote after a general election. It may be objected that a provision like this would make amendment impossible in practice. On the other hand, nothing short of this is likely to reassure the minorities. We must, therefore, insist that if the power of amendment is to be vested in the Dominion Legislature itself, then, though the possibility of amendment may be provided for, the exercise of



the power of amendment should not be possible without the unanimous support of the minorities.

One general observation that we desire to make at this stage is that the Federal scheme as set out in the 1935 Act would have to be radically modified before it can possibly afford even a basis of discussion so far as the Muslims are concerned. It would be futile to proceed with any examination of that scheme and to suggest modifications unless this fact were recognized and accepted. The modifications which would have to be made in that scheme result naturally from the factors which we have tried to explain in previous paragraphs. The basic assumption upon which that scheme proceeds is that the authority which vests in the Crown in respect of the governance of India has been apportioned between the Provinces and the Centre. This basis must be altered and a new basis must be accepted if any Federal scheme is to have a chance of obtaining the support of the Muslim; and that new basis is that the Provinces must be recognized as sovereign units under the Crown, which would, as such units, be prepared to delegate such minimum authority to the Centre as may be necessary for the setting up and working of an All-India Federation. On this basis, the Centre must not be invested with any greater authority than the minimum necessary to secure the working of the Federation, nor must the scope of the Federation be any wider than is absolutely essential.

## INDIAN STATES

It must also be recognized that, if the Federation is to include the Indian States, the Indian States must come into it on a basis of equality with British Indian Provinces and no special concessions must be made to them. We really do not see what

case the States can make out for any special treatment or concession. The divisions between Indian States and British India are purely geographical. The people inhabiting the Indian States belong to the races, profess and practise the creeds, and follow the social codes which are to be found in the neighbouring British Provinces. In no aspect do the Indian States present a problem like the one which divides the main communities throughout India. It is often pretended by the Rulers and Administrators of Indian States that they are fortunately not faced by any communal problem. This pretension stands on the same level as many other pretensions made on behalf of the States, for instance that there is no hint of oppression or mal-administration or even discontent in the Indian States. It is sometimes pretended that there is not even a desire for political advancement among the people of the Indian States. With these questions, however, we are not here directly concerned. We desire merely to emphasize that the only safeguard that the Indian States can reasonably insist upon is that there should be no interference by the Federation inside the Indian States with regard to matters which are no concern of the Federation, for instance, the position and dignity of the Ruler, dynastic questions, the rule of succession, the relations between the State and the Paramount Power, etc. Once that is secured, there is no reason why any exception or concession should be made in favour of Indian States. We repeat, therefore, that, if it is desired that the Indian States should come into the Federation, they must come into it in all respects on the same footing as the British Provinces. We must also make it quite clear that the Federation must be a Federation of all the Indian peoples and that the people of India, whether British or State, must find representation in the Federation. We are surprised that British statesmen, nurtured in the most democratic traditions, should be



willing to reconcile themselves to an arrangement where the parties to the Federation would be the people of British India and the Rulers of Indian States. It appears to us to be a most unfair and lop-sided arrangement and, so far as the States are concerned, entirely undemocratic.

### FEDERAL LEGISLATURE

Certain conclusions will be seen clearly to emerge from the foregoing. First, that the representation of Indian States in the Federal Legislature must be determined on the basis of population and no question of weightage must be raised.

Secondly, that the method of securing representation of Indian States in the Federal Legislature must be the same as in the case of British India.

18. While we are on this question, it would be convenient to state our views here with regard to the method of election to the Federal Legislature generally. The 1935 Act provides that the method of election to the Lower House shall be indirect and that to the Upper House direct. This appears to us to be a most topsy-turvy arrangement. In our opinion, election to both Houses of the Legislature should be direct, but, if it is considered essential in a Federation that one House should represent the people and the other House the units of the Federation, it is the Lower House, being the more popular and the more powerful House, which should be elected direct and the Upper House which should be elected by the units. On the basis of this arrangement, the representation of Indian States in the Lower House should be by direct election and in the Upper house by means of some device which corresponds to the method which may ultimately be adopted in British India.

### FEDERAL SUBJECTS

19. Thirdly, the scope and authority of the Federation must be coextensive in the States and the Provinces. All States that join the Federation must federate in respect of a uniform list of subjects and the Provinces should also federate only with regard to the subjects contained in that list. Also, the authority of the Federation with regard to those subjects must be the same in the States as in the Provinces. The scheme of 1935 is open to serious objection in these respects. It contemplates that State "A" may federate with regard to 40 subjects, State "B" may federate with regard to 35 subjects, State "C" may federate with regard to 30 subjects and so on. List I in the Seventh Scheduled the Act contains several matters with regard to which it is not expected that any of The States will federate and, therefore, those Subjects will be Federal subjects so far as the British Provinces are concerned but will be Provincial subjects so far as the States are concerned. It also appears that the Federation will not be empowered to exercise uniform authority with regard to Federal subjects, that is to say, subjects which are Federal so far as all the States and the Provinces are concerned. It appears that the authority of the Federation with regard to Federal subjects will in several respects be limited and circumscribed so far as the States are concerned and will be wider so far as the Provinces are concerned. All these anomalies must disappear. There must be only one uniform list of subjects for all States and Provinces and the authority of the Federation in respect of these subjects must be uniform in the States and in the Provinces.

## PROVINCIAL SUBJECTS.

20. All subjects outside the Federal List must become Provincial subjects and residuary powers with regard to legislation as well as taxation must vest in the Provinces. This follows directly from the basis that we have proposed that the Federation shall possess only such authority as is expressly vested in it on behalf of the Provinces and that all residuary authority must vest in the Provinces. The result will be that the place of the three legislative Lists now set out in the Seventh Schedule to the Act will be taken by two Lists - Federal and Provincial—and there will be no category of subjects in which the Federation and the Provinces will have concurrent powers of legislation. It is true that it may be desirable to preserve uniformity in respect of certain matters falling within the Provincial Lists. Where the need of such uniformity is recognized, uniformity could be secured by making a provision like the one contained in Section 103 of the 1935 Act, whereby the Federal Legislature would, at the request of two or more units, enact legislation in respect of a subject in the Provincial List.

There are several subjects in the present Federal List which will, under our scheme, have to be transferred to the Provincial List, and there are others which will have to be split up between the two Lists. But that is a matter of detailed investigation which can only be undertaken by a competent Commission and can only be decided after hearing all points of view. We propose to make specific references to some of these subjects but the modifications that we suggest must not be taken as exhaustive; they are only illustrative.

For instance, take Items 21 and 22 in List I in the Seventh Schedule. These items refer to maritime shipping and navigation,

admiralty jurisdiction and major ports. Now, all the major ports with the exception of Cochin, which stands in a class by itself, are situated in British India. The States would, therefore, have no objection to making major ports a Federal subject as none of the major ports is administered by an Indian State. On the other hand, two of the major ports, namely Calcutta and Karachi, are situated within Provinces the population of which is predominantly Muslim, and they serve a hinterland populated largely by Muslims. The Muslims have in the past had considerable experience of the treatment that they are likely to receive in the commercial and industrial fields and they entertain apprehensions that, if maritime shipping and major ports continue to be regulated by the Centre, the North-Eastern and North-Western territories are likely to be discriminated against by subjecting these two ports and the shipping based upon them and trading with them to discriminatory treatment. These subjects must, therefore, be transferred to the Provincial List subject to securing by legislation or convention the necessary amount of uniformity, where uniformity is essential, and freedom from discrimination. On the other hand, though such matters as customs, railways, post offices, telegraphs and telephones must continue to be Federal, provision must be made in respect of these also against discriminatory treatment of units, areas, classes of traffic or sections of the population.

## DEFENSE.

23. Apart from setting up a Sovereign Dominion Legislature, the change-over to Dominion Status would involve the transfer of defense into the hands of a responsible Ministry at the Centre. Here, again, the position must be uniform with regard to States and Provinces. Let us try to develop the subject a little



further. So far as British India is concerned, we visualize that the arrangement likely to be arrived at would be somewhat on the following lines. British troops would be stationed in India only for purposes of Imperial Defense and their numbers, cost, etc., will be settled by means of a Treaty between Great Britain and India. Subject to the provisions of the Treaty, they will continue to be the concern of the British Government. The Indian section of the Indian Army, however, including its British officers, must be transferred to the control of a responsible Minister and must become a complete and adequate defense force in itself, that is to say, complete in respect of all arms requisite for defense by land, sea and air. This Army we shall refer to as the Federal Army. We have made a specific reference to British officers of Indian units as a certain number of these must continue till complete Indianisation is achieved, though we hope that this process will not take longer than is absolutely necessary. With regard to the Federal Army, the Muslim position is clear and definite. They must be assured of an adequate share in this Army, having regard to their past traditions and the degree of their association with the defense of India, -and this share must in no case be less than their present proportion in the Indian units of the Army. Such share as may be allotted to them, subject to this minimum, must be secured to them not only among the men but also among the officers and not only in all arms of the Army but in the air and naval arms also, nor must the scientific and technical sections be excluded. We are certain that this will be accepted as an extremely fair proposal and there need be no difficulty in arriving at a settlement with regard to defense on this basis.

24. Another change that will be brought about under a Dominion Constitution will be that neither the Governor-General nor the Governors would have any authority in the Provinces in

respect of law and order. British troops will not be concerned with this aspect of the matter and Parliament will never countenance their use in putting down internal disorder. It would be equally undesirable to permit the use of any part of the Federal Army for these purposes as the responsibility in respect of that Army will be that of the Federation and the responsibility for their use for quelling -internal disorder and disturbances will rest with the Provincial Governments concerned over whom no kind of control will be exercised from the Centre. It follows, therefore, that each Province must make its own arrangements for meeting situations of that kind where the ordinary Police force may not prove adequate or effective. There is also the question of uniformity with the Indian States to which we have already made reference. The third factor, the seriousness of which has not yet been recognized, is that the greater the freedom which India secures from British control the greater will be its need for making provision for the defense of the country against external aggression and the forces maintained by India at the present moment will prove entirely inadequate. In any case, provision must be made for considerable reserves. This, too, would necessitate some sort of arrangement and organisation in the Provinces for the maintenance of second line troops. Provinces must, therefore, be at liberty to maintain a militia or territorial force and to make arrangements for its adequate equipment. This would necessitate the Provinces being vested with power to manufacture arms and ammunition. This is one of those matters where the subject would have to be distributed between the Federation and the Provinces and the States. We consider that the Federation should have power only to set up Government factories for the manufacture of such arms and ammunition as are necessary for the equipment of the British forces in India or the Federal Army. For every other purpose, the



power to manufacture arms and ammunition or other military equipment, and the power to grant licenses for such manufacture, whether for the purposes of equipping the Police and territorial forces or for purposes of sale, must be transferred to the Provinces.

#### **NORTH-WEST FRONTIER AND BALUCHISTAN.**

25. This is another subject which would be transferred to popular control under Dominion Status. Under the separation scheme, these areas would be included in the North-Western Federation and the question would solve itself automatically. Under the scheme of an All-India Federation, they would raise a difficult problem. It is obvious that these areas would never submit to being administered from a Federal Centre Of the kind that is bound to be set up under Dominion Status. So far as the Frontier tribes are concerned, a final decision must first be taken as to the policy to be pursued in respect of these tribes and the territories that they inhabit. That is to say, the land frontier of India in that region must be finally and carefully settled. Tribes and areas left outside that line must be completely independent and free from any kind of control or attempt at control from India. It will be for them to decide whether they wish to become part of Afghanistan or desire to set up some autonomous arrangement of their own. Their relations with the Federation of India must be regulated by a Treaty and the terms of that Treaty must be scrupulously observed. Such tribes and areas as fall within the frontier of India must become part of the North-Western Frontier Province and the Provincial Constitution must be readapted to that situation. In the same way, British Baluchistan should either go with the frontier and should form part of the North-West Frontier Province or should be added to

the Punjab or to Sind, whichever may be regarded as least inconvenient from the administrative point of view. This arrangement would, no doubt, require financial adjustments between these Provinces and the Federation but that should present no insuperable difficulty.

#### **SAFEGUARDS**

26. A large number of the proposals which we desire to see adopted in the Constitution, 'if it is to take the shape of an All-India Federation, are a general character and should serve to reassure all sections of the population. Some of them would have special interest for minorities and may from their point of view be regarded as safeguards, but at this stage we propose to draw attention only to whatever may be classified expressly as safeguards for minorities. During the period when the Congress Ministries were in power in the majority of the Provinces, the communal safeguard embodied in the 1935 Constitution proved to be a dead letter. If the need for the exercise of Governor's special power for the protection of minorities had not arisen owing to the fact that no prejudice had been caused to the minorities, it would have been a very happy state of affairs, but unfortunately that was not so. The Muslims have suffered great prejudice during that period in those Provinces and the safeguard did not come into operation as the Governors were too scared to take the risk of a row with their Ministries. The position, therefore, is that a safeguard of that description has proved ineffective and the question is whether any machinery can be devised which should make safeguards of that kind operative. As a matter of fact, it is not only the minorities who have been apprehensive on that score but the States too feel that, once they come into the Federation, matters that may be outside the proper

scope and authority of the Federation may be meddled with by the Federation, to the prejudice of the States and that there would be no effective means of putting into operation the corresponding safeguard with regard to the States. This is a very serious problem and it is not easy to suggest a solution which should be both complete and effective. Any device or combination of devices that is likely to be adopted will prove only a partial remedy. We venture to suggest, however, something which may be an improvement upon the present position and, if given a fair chance, might serve to reassure the States as well as the minorities.

27. We suggest that, to begin with, the language of the safeguards should be made more precise and matters which are sought to be safeguarded should be defined and set out in the Statute itself, so far as they are capable of definition. Machinery should next be set up to bring these safeguards into play when the need arises and a case has been made out. For this purpose, we propose that, as soon as the Federal Legislature is set up, the representatives of the States in the Federal Legislature should meet together to elect a Committee which, may be called the "States Committee". This Committee should be a statutory Committee and should elect its own Chairman out of its members. It should also appoint a salaried Secretary and must be given adequate office establishment and equipment. This Committee should have the right to call for papers relating to all matters coming within its purview. This Committee shall be charged to watch over such of the interests of the States as form the subject-matter of the safeguard relating to the States. Matters may be referred to this Committee by a member of the Committee or any State member of the Federal Legislature or a Ruler or a Minister of a State. It shall have power to enquire into

the operation of any measure or order, whether contemplated or already in force, which infringes or is likely to infringe the States' safeguard. Where the Committee on such enquiry as it may deem fit to make, comes to the conclusion that the States' safeguard is involved, it should proceed to draw up a case for the consideration of the Prime Minister who would, among other matters, be charged with the duty of safeguarding the interests of the States as well as of those of the minorities. On a case being submitted to the Prime Minister, he would make or cause to be made such enquiries as may appear to him to be necessary and would then discuss the matter with the States' Committee. As a result of such discussion, it should be possible to arrive at a satisfactory arrangement with reference to a large percentage of the matters over which differences might arise. If satisfaction is not obtained from the Government, the Committee shall then submit the case in its original form, or with such amendments or modifications as discussion with the Prime Minister may have necessitated, to the Governor-General. If the Governor-General, after hearing the Committee and the Prime Minister, is convinced that a case for such interference as is desired by the Committee has been made out, he shall issue orders accordingly. If he is not so satisfied, he shall refer the matter to the Federal Court for advice and if the Federal Court, after hearing the two sides, reports that no case for interference has been made out, the Governor-General shall decline to interfere. If it reports that a case for interference has been made out, the Governor-General shall issue directions accordingly. A similar Committee with similar powers should be elected by members representing minority constituencies which may be called "the Minorities Committee". This Committee would be charged with the safeguarding of the interests of the minorities and would have the same status and powers and would follow the same



procedure as the States Committee. Minorities Committees, on the same model, would also be set up in each Province and would have similar powers and functions. We are conscious that this proposal can be subjected to a good deal of criticism, but we venture to submit that it has obvious merits. Its chief merit is that it would serve as a safety valve and bring within the purview of reasonable and friendly discussion between constitutional organs and authorities matters which are otherwise likely to become festering sores in the body-politic and result in violent eruptions. We are convinced that a large number of these matters would be amicably settled between the Committees and the Government and that a very few, and only those in respect of which a genuine and irreconcilable difference is revealed, would have to be referred to the Governor or the Governor-General and eventually to the Federal Court.

28. We now advert to some specific matters which would require to be safeguarded and the first and most important of these is the question of religion. We endorse wholeheartedly and emphatically the suggestion made recently by Mr. Srinivasa Iyengar that the Indian Legislatures should have no power to legislate on purely religious matters; but we cannot go so far as to say that there should be no legislation on matters covered by what are known as the personal laws of different communities. With regard to purely religious questions the only kind of legislation which may be permitted should be legislation the object of which is to repeal or to restrict the scope of any existing legislation which seeks to regulate religious matters. On the other hand, provisions of the personal law applying to different communities may require amendment from time to time, as these laws govern matters like succession, inheritance, guardianship, marriage, legitimacy, etc. In this connection, we

would urge that any regulation of these matters must be left to the representatives of the particular community affected, unless the nature of the proposed legislation is such that it affects not only the community, whose personal law is sought to be amended but also other communities. In this last class of case an understanding should be arrived at between the communities affected and legislation should be put through to give effect to the understanding. This kind of case will, however, be of rare occurrence.

29. Complete liberty must be guaranteed to the subject in matters of religion, that is to say, the profession, practice and propagation of religion must be absolutely unrestricted, subject of course to the general law regulating public order and morality. There is one aspect of this question with regard to which considerable doubt exists. It has been said that propagation of a faith means merely the expounding of the principles of that faith in a reasonable and courteous manner. We consider that this is too restricted a definition and could certainly not be accepted by the Muslims. It must be made clear that propagation means not only the expounding of the principles of a faith in a reasonable and courteous manner but also includes absolute freedom with regard to change of religion and the declaration of such a change. The religious safeguard must, therefore, place it beyond doubt that religion is a matter of conscience for everybody and that no restrictions of any kind whatsoever, for instance, a declaration before a Magistrate, would be imposed upon conversion or change of religion. Nobody has any right to restrain any other person in the slightest degree from declaring his or her adherence to any faith that may appeal to them, or to attempt to convert any person to any particular faith by force or coercion. These are matters which in any civilised society would not require



stressing at all; but in view of the unfortunate experiences which many people have undergone in this respect in this country we must emphasise the importance of this question. It is imperative that this matter should be placed beyond any possibility of doubt.

Language and script have in the peculiar conditions of India assumed a greater importance from the political and constitutional point of view than would perhaps be attached to them in countries where conditions were more normal. It is well known that Muslims regard the Urdu language and script as their national language and script in India and are very apprehensive that constitutional and political development in India may tend to weaken the position which this language and script at present occupy. Their preservation is essential for the preservation of Muslim culture in India and, therefore, must be guaranteed by the constitution.

The linguistic problem in India is a very complex one and this is not the place to enter upon a detailed discussion of it, but we could venture to put forward a scheme for the consideration of the different communities in India which may prove helpful in solving some of the bigger difficulties connected with this question. Briefly, our scheme is that India may be divided into a number of linguistic zones or regions without any reference to the geographical limitations of the various States and Provinces. We need not specify the number of these zones as no rigid number need be adhered to. An endeavour should, however, be made to delimit the zones in such a way that there are in a zone only two principal communities between whom the question of language and script has to be settled. There are bound to be a certain number of zones where the question will probably not arise at all as the communities included in those zones may prefer to select one language as the vernacular of the zone. In the

remaining zones, each of the two principal communities would specify one language as its vernacular and the two languages thus specified would become the compulsory vernaculars of that zone and every child in that zone shall be taught the two vernaculars irrespective of his community or creed. If this scheme were accepted, a certain amount of linguistic unity over large areas would be secured in the course of a generation and the question would ultimately resolve itself along very simple lines. We do not, however, insist upon the acceptance of this scheme as an essential element in the settlement of the linguistic problem. We venture to put it forward merely for consideration. What we do insist upon is that the apprehensions of the Muslims with regard to the Urdu language and script should be allayed and the minimum provision which must be made is that, wherever there is a demand by the Muslims for the teaching of Urdu in the Persian script, the Provincial Government shall be bound to make provision for such teaching. It would also be necessary to guarantee that, wherever Urdu is at present accepted as a vernacular, no other language or script shall be substituted in its place. Thirdly, where Hindustani or Hindi is at present accepted as a vernacular, the use of the Urdu script shall be permissible as an alternative script and no restrictions shall be placed upon its use in educational institutions, Government offices, courts, etc.

With regard to legislation affecting any particular Community in matter of education, language or culture generally, the consent of 75 per cent of the representatives of that community in the legislature in which a measure of that character is introduced must be secured before the measure becomes law.

## REPRESENTATION

We have already given our reasons for refusing any weightage to the States in the matter of representation in the Federal Legislature. While dealing with that question we have tried to show that none of the matters the safeguarding of which is essential from the point of view of the minorities is likely to be involved between the States as such, on the one hand, and British India on the other. On the question of weightage for the minorities our own view is that the time has come when the Muslims should face the question squarely whether their experience in the past has not shown them that the advantages gained in some respects as the result of weightage being given to minorities in the Legislatures and in the Services have not been outbalanced by the disadvantages. If on a careful consideration of the question and the balancing of advantages and disadvantages they arrive at the conclusion that on the whole this question of weightage has merely introduced an additional complication into the constitutional field which already bristles with difficulties, they may well reconcile themselves to the position that their representation in all respects should be in accordance with their proportion in the population. This would to a very large extent simplify the extremely difficult question of representation. On the other hand, if they feel that the advantages outweigh the disadvantages, there is no escape from the position that the principle of weightage must be continued both in the composition of the Legislatures and in recruitment to the Services. So far as the Muslims are concerned, the consideration of the question is made difficult by the fact that in the two major Provinces where the Muslims are in a majority, namely, Bengal and the Punjab, their majorities are extremely small and there is not very much of a margin left out of which to allot weightage to

the minorities. On the other hand, in Provinces where the Muslims are in a minority the weightages which they enjoy may appear very attractive on paper and yet we doubt whether in actual fact they contribute in any very large measure towards safeguarding the position of the community in those Provinces.

34. In case the principle of weightage has to be retained and the future constitution is to take the shape of half a dozen or more Federations in India, the question of weightage for each minority in different areas could be settled on a more or less reciprocal basis. In case, however, the scheme of an All-India Federation is to hold the field and the principle of weightage is to be maintained, two difficult questions must be settled. The first is the question of the measure of representation to be allotted to the Muslims in the Federal Legislature. The 1935 scheme contemplates that Muslims will have 33 1/3 per cent of the British Indian representation in the Federal Legislature on the basis of separate electorates. No corresponding reservation has been made in favor of the Muslims, or indeed of any other minority, in the States portion of the representation in the Federal Legislature. We have already stated our view with regard to the method of representation of the States in the Federal Legislature, namely, that the Federal Lower House must be wholly elected, the method of election being direct, and that the Upper House, if it is not to be directly elected should represent the Provinces and the States as such. So far as Muslim representation is concerned, we insist that one-third of the seats in each House must be allotted to the Muslims. In the Lower House this representation will be secured by separate electorates in British India, as well as in the States. In the Upper House, so far as British India is concerned, the Muslim members of Provincial Legislatures will elect the Provincial Muslim quota



from each Province; and as regards the States, some settlement must be arrived at whereby one-third of the States' seats in the Upper House are reserved for the Muslims. When the scheme of the 1935 constitution was under consideration, Hindu representatives from British India readily accepted the very heavy weightage granted to the States in the matter of representation in the Federal Legislature as the position was that the larger the weightage granted to the States and the smaller the share allotted to British India, correspondingly smaller would be the share which could be allotted to the Muslims by reservation. We consider that this position cannot be justified from any point of view and that, unless the representation of the States in the Federal Legislature is modified as suggested by us, the Muslims could not lend their support to the Federal scheme.

35. Another question that must be settled in this connection is the adaptation of the quantum of representation to changes in the population. It will readily be agreed that the quantum of representation allotted to the different communities today could not possibly remain fixed and unaltered forever. Changes in the proportion of population belonging to the different communities may take place very rapidly and some formula must be settled which would automatically, apply to such changes. The question is not free from difficulty but we venture to submit that some arrangement on the following lines might be regarded as fair and equitable. In case representation is based upon proportion in the population without any weightage, the matter would be a simple one. After the results of each census are known, representation must be adjusted to the new proportions. If on the other hand, the principle of weightage is continued, then, where a minority Community has gained in population, its representation should increase by one-half of the increase, the increase to be taken out

of the share of the majority. Conversely, where a minority has decreased in population, its representation should decrease by one-half of the decrease, the portion surrendered going to the majority. Let us illustrate this by a concrete instance. Let us assume that the Muslim proportion in the population of the country is roughly 25 per cent. and that they are allotted  $33 \frac{1}{3}$  per cent. representation. As the result of a census it is discovered that the Muslim percentage has fallen to 21 per cent., that is to say, by 4 per cent.; their representation would be decreased from  $33 \frac{1}{3}$  per cent to  $31 \frac{1}{3}$  per cent., that is to say, by 2 per cent. On the other hand, assume that their percentage has risen to 29 per cent.; their representation must consequently be increased to  $35 \frac{1}{3}$  per cent., that is to say, by 2 per cent. In each case, the increase would come out of the share of the majority and the decrease would add to the representation of the majority. In other words, the effect of the acceptance of any such scheme would be that where a minority has increased its numbers it will not be able to claim an increase in representation corresponding to the increase in its numbers and its weightage will be reduced to the extent of half the increase. So that if the increase in population continues, gradually the whole of the weightage will be eaten up. Once that position is reached, the increase in representation must correspond to the increase in population. On the other hand, where the percentage of a minority decreases, its representation will not be decreased correspondingly and the weightage enjoyed by it will go on increasing as its percentage decreases. Any such device which may, however, be adopted must be subject to the general principle that in no case should a majority be reduced to a minority, and consequently, of course, that a minority should not enjoy majority representation. A certain amount of elaborate calculation would have to be done on the basis of any scheme



that may be accepted; but the point we desire to stress is that some provision must be made to meet cases of increase and decrease in the proportion of the population. Otherwise after a number of years, the fixed proportions will begin to operate to the prejudice of some section or other of the population. Whatever device is eventually adopted would apply to the Federal Legislature as well as to the Provincial Legislatures.

36. Whether the principle of weightage is retained or is abolished, Muslim representation for the present must continue to be secured by means of separate electorates. Here too, however, we are of opinion that this need not be made a permanent feature of the constitution. We consider that separate electorates should continue in force for fifteen years after the date of the coming into force of the new constitution and that thereafter it should be within the power of each Legislature to adopt such modifications in the method, and indeed in the quantum of representation, as may be agreed to by 75 per cent. of the representatives of the minority affected in the particular legislature in the form of a resolution which is thereafter confirmed by the same proportion of the representatives of the minority affected in a second resolution after a general election has intervened.

As regards representation in the Services, so far as the quantum is concerned the same proportion must be observed here as in the case of representation in the Legislatures, that is to say, if weightage is to go, representation in the Services should be in accordance with the population proportion, and, if weightage is retained, it should be in accordance with the quantum of representation in the Legislatures. So far as the method of recruitment is concerned, the Federal Public Service Commission and the Provincial Public Service Commissions

must contain at least two representatives of minority communities, and in Provinces where the Muslims are in a minority one of these representatives must be a Muslim. What is more important, however, is that when a Selection Board is constituted there must sit on each Board at least two representatives of minority communities, and again, where the Muslims are in a minority, one of these representatives must be a Muslim. The point we desire to stress is that it is not enough that there should be representatives of minorities, on the Commission itself but that each Selection Board must be so constituted that the minorities find representation on the Board. The appointment of the members of the Commission must rest with the Governor-General at the Centre and the Governors in the Provinces, and they must be warned in their respective instruments of instructions that, not only are they not bound to consult their Governments in making these appointments, but that they must not do so. Otherwise the whole value of setting up Public Service Commissions will be lost. If the Ministers are to advise the Governor-General or Governors in the choice of members of the Public Service Commissions, these appointments will tend to become political appointments and it will not be of the slightest use to set up these Commissions. Indeed, that tendency has already become apparent in appointments to the Public Service Commissions in several Provinces.

For the purpose of recruiting to subordinate and inferior posts in the Provinces, we would suggest that in each Province the Governor should set up a Selection Board which may consist of, say, three or more members drawn from among senior members of the Provincial Services, on which the minorities should be represented in the same manner as in the case of the Public Service Commission Boards. This Board should be a

peripatetic Board which should go round to the headquarters of each Provincial district and settle a list of suitable candidates for recruitment to subordinate and inferior posts, and the appointing authorities should then be limited to making appointments out of this list in accordance with the proportions which may have been agreed upon and laid down.

## THE JUDICIARY

39. An independent, Judiciary is the ultimate guardian of the rights and liberties of the citizen. Under the 1935 scheme, appointments of Judges of the Federal Court and the High Courts would be made by His Majesty. We do not know what the position may be under a Dominion constitution but, if the independence of the Judiciary is to be maintained, these appointments must continue to be made by His Majesty or at least, by the Governor-General at his discretion. Wherever the, ultimate power of appointment is to be vested, there must be an express provision that the Federal and Provincial Ministries shall have no right to advise the Governor-General directly or through the Provincial Governors, on this matter and the Governor-General must be expressly prohibited from consulting with his Ministry or any of his, Ministers on this matter.

40. So far as the Federal Court is concerned, the question of the enlargement of its appellate jurisdiction is dealt with in Section 206 of the 1935 Act. We consider that the Federal Court should also have a certain amount of criminal appellate jurisdiction. In all cases where an acquittal is reversed by a High Court on appeal by the Provincial Government, there should be an appeal against the conviction to the Federal Court, both on law and on facts, on the principle that a convicted person must

have at least one right of appeal. There should also be a right of appeal in all cases where a High Court maintains a conviction for an offence punishable with death or with transportation for life, though in these cases the appeal may be restricted, to questions of law. In any other criminal case there should be an appeal by special leave of the High Court, or of the Federal Court.

We are also of the view that, with the setting up of supreme executives at the Centre and in the Provinces, the High Courts should be empowered to issue writs of habeas corpus. Under the new conditions, this will be an essential safeguard for the protection of the liberty of the individual against illegal executive action.

We also, think that the practice of appointing a certain number of T.C.S. officers to judicial appointment must cease and that all recruitment to the ranks of the Judges, whether Judges of the Federal Court or the High Courts or members of the subordinate Judiciary, must be made from among the practicing members of the Bar. This suggestion was strongly pressed during the First Round Table Conference and we must regret that it has been altogether ignored.

43. We must also draw attention to the fact that, though the separation of judicial and executive functions was one of the foremost items in the Congress program up to 1937, the Congress have practically given the go-by to this item since Congress Ministries took office in a majority of the Provinces in India. We consider that before any further step forward is taken in the constitutional field this essential reform must be carried into effect. The matter is really not so difficult as it has been tried to be made out in the past nor would any appreciable extra expense be entailed by the change. All that is necessary is that magistrates like subordinate judges should be subordinate to the



Sessions Judge and through him to the High Court rather than to the District. The position of the District Magistrate vis-à-vis the other magistrates with reference to their judicial functions should be the same as that of a Senior Subordinate Judge vis-à-vis the other Subordinate Judges in a district. Appeals from orders and judgments of all Magistrates should lie to the Sessions Judge and reports upon the quality of the judicial work of the Magistrates should be made by the Sessions Judge and not by the District Magistrate. All orders with regard to the powers and transfers of Magistrates should be made by the High Court and not by the Provincial Government. A few such simple adjustments would secure the object in view. This reform has been long overdue and the failure of the Congress Ministries to implement it in the Provinces in which they have been in power for over two years leads one strongly to suspect that the party in power will never be anxious to carry out this reform as the opportunity to influence certain sections of the magistracy will always be regarded as a powerful weapon in the hands of the Executive.

## PROVINCIAL GOVERNORS

44. We do not know whether under a Dominion constitution the power of appointing Provincial Governors would be exercised by His Majesty on the advice of his Ministers in Great Britain or on the advice of his Ministers in the Province concerned but, whatever the position may be in that respect, we must protest emphatically against the continuance of the practice of appointing Governors, outside the Presidencies, from among members of the Indian Civil Service. These appointments are absolutely incompatible with the spirit of the 1935 constitution and would also be utterly incompatible with a Dominion constitution. We think that Provincial Governors must be

appointed from among the public men of India and Great Britain and that, as time passes, more and more should be selected from among the former than from among the latter. Where it is not possible to select a suitable person from among the public men of either country, resort may, in extreme cases, be had to the Home Civil Service but in no case must the appointment go to a member of the Indian Civil Service. Human nature being what it is, we consider it extremely unlikely that an officer who has all his life exercised executive authority should make an ideal constitutional Governor. This matter has been pressed for a number of years and it is time that this principle were expressly recognized.

## MISCELLANEOUS

We have observed a very strong tendency on the part of Provincial Governments to rush through their Legislatures pieces of legislation of a more or less expropriatory character to which retrospective effect is often given. We consider that this tendency is most mischievous and should be expressly restrained. There must be a provision in the constitution invalidating all such legislation and declaring that no such legislation shall have retrospective effect and that titles acquired under an existing law should not become open to question as the result of a legislative measure subsequently passed. Where such titles have been upset under legislation to which retrospective effect has been given, the titles must be restored.

## RESERVE BANK

The powers which are vested in the Governor-General at his



discretion under the 1935 constitution in respect of the appointment of the Governor and Deputy Governors of the Reserve Bank are in the nature of a safeguard. Under a Dominion constitution these powers must continue to be exercised by the Governor-General at his discretion without reference to his Ministry as, failing that, the Reserve Bank would really become an instrument of the Federal Executive. If these powers are not to continue to vest in the Governor-General at his discretion, the whole constitution of the Reserve Bank must be altered and the Bank should be converted into a State Bank upon the Directorate of which the various communities must be represented in agreed proportions.

Considerations of a similar character must apply wherever powers of appointment are at present vested in the Governor-General at his discretion.

## BOUNDARIES OF PROVINCES

The Constitution must make provision for the amalgamation of Provinces or readjustment of their boundaries inter se and this power must be vested in the Provinces. Provision must be made for due consideration of the views and wishes of those: likely to be affected by the change, before the change is carried into effect.

## CONCLUSION

49. We recognize that the real solution of the communal problem lies in the hands of the communities themselves and that provision in the Constitution can at the best offer only palliatives and partial remedies. We would, therefore, earnestly appeal to the different sections of the people of India to readjust their

attitude towards each other and so to behave towards each other as to foster a spirit of fraternal trust and co-operation rather than to intensify the present most unfortunate and deplorable state of distrust and lack of confidence. We cannot help feeling that the first advances in the direction of mutual trust and cooperation must come from the majority community. Instances can be multiplied of the spirit of exclusiveness which pervades all strata of Hindu society and, so long as that spirit of exclusiveness continues to dominate Hindu society, no progress towards a state of mutual trust and confidence can be expected. Instances can be multiplied of educational institutions, commercial associations, social clubs and societies which, though nominally non-communal in character, are in practice exclusively Hindu in their composition and where no non-Hindu can ever find admittance. Where an association or a society is expressly communal in character no grievance can exist in respect of it as there is a good deal of beneficent work which associations and societies of that character can accomplish but our complaint is with regard to public and semi-public associations and societies which pose as national in character and yet are rigidly communal in their composition. There are commercial associations and corporations where no non-Hindu can find admittance under any pretext and, so long as that state of affairs continues to exist, it is useless to make appeals to the minorities to trust the majority community. There are, for instance, associations of brokers and commission agents whose numbers are limited under their rules and by-laws and the total membership of which is at present monopolized by the Hindu community. Nominally, on a vacancy occurring, it would be open to anybody to purchase the membership but in practice nobody who is not a Hindu has the faintest chance of gaining admittance. We consider that, unless the majority community voluntarily offers to mend this state of

affairs by enlarging the membership of all such associations and societies so as to enable members of the minority communities to obtain adequate representation in these associations and societies, the membership of such associations and societies should be enlarged by law and the added membership should be reserved for members of the minority communities.

Khan Abdul Wali Khan did not publish the complete memorandum, but, Z.A.Suleri, the Editor of the Pakistan Times, in order to please his mentor dictator Zia ul Haque, reproduced the whole memorandum and then drew his own conclusions. As usual, trying to miss-interpret Sir Zafrulla. He wrote a long article under the title "Paint Me as I Am". The relevant portion of his long article is included for record.

"This truthfulness about Quaid has become a matter of national urgency for various reasons. For one thing we should fully grasp and acknowledge that the Quid is a measure of our achievement. He is the founder of Pakistan in as complete a sense as no single individual has founded a country, a nation or an empire. The truth is that but for him there would have been no Pakistan and no one knew this fact better than his adversaries. That is why he was constant target of their attacks. No other contemporary leader has been so grossly subjected to vilification and assassination of character. They wanted to break him. Could they but demoralize or un-nerve him, the dream of Pakistan would have vanished with the morn of Indian independence. And they were correct in their calculations.

But for Jinnah, the British used to send teams of journalists and minor politicians to find out the state of politics and stature of leader in India and they would invariably report to their masters in Whitehall—I was in London those days—that but for Jinnah, all other were reasonable on the demand for Pakistan.

For those worthies the demand was a counter for bargaining, bargaining for jobs. After all Nawabzada Liaquat had come to terms with the Congress Assembly leader, Bhullabhai Desai, for the formation of the interim government in 1945 behind the back of the Quid. It was therefore a point of highest Joint British-Hindu strategy that the authority of Quid should be undermined by all means available. And had it come to their knowledge that the Quid was suffering from tuberculosis, they certainly would not have hurried with the independence and partition plan a year ahead of the schedule. They realized their miscalculation when the Quid died in 1948—the same year that the British had originally decided to quit.

The Quid lent an irresistible dynamism to the Pakistan Movement by virtue of his conviction and character. He won his way against the formidable obstacle through sheer guts and statesmanship. The British Hindu opposition to the emergence of Pakistan was however so intense that even as the principle of partition was conceded, a blueprint for undoing it was already in hand for implementation. A well-placed Hindu journalist is the witness to the fact that when some of the Hindu and Muslim Bengal leaders were trying to keep Bengal united and in an effort to register the support of the Congress High Command, Sarat Chandra Bose met the President, Pandit Jawaharlal Nehru, he was pointblank told to give up his move because Pakistan was not destined to last longer than a few days. No wonder, under the joint supervision and advice of Nehru and Mountbatten, the Indian troops invaded Kashmir. The aim was not only to snatch away from the grip of Pakistan a strategic area but to erode the agreed principle that contiguous Muslim areas would constitute the new State. It was a stab in the back and that Sword of Damocles is still hanging over our heads. Again, no sooner the



Quaid died than the so called Police action was launched against the biggest Muslim State of Hyderabad. The drive to corner Pakistan into a position of satellite continued unabated alternatively through hot and cold war until the fall of Dacca when Mrs. Indira Gandhi delivered her final verdict—the two nation theory had been found hollow and false. It is in the light of this dictum that the remnant Pakistan has been treated. The Soviet occupation of Afghanistan merely gives it another “opportunity of a century”—the words Subramaniam used on the occasion of the disturbances in East Pakistan—to deal with Pakistan.

The history of Indian Hostility is stark clear. But the point is how have we responded to the challenge? Actually, if the British and Hindu press and public men focused their attention on maligning the Quaid both during his life and after because if they did not approve of the Pakistan Scheme in the first instance they did not stop to sabotage it afterwards—whatever literature has been produced is brimful with hatred of Pakistan and criticism of the Quaid—we for our part did not lag behind them in strengthening their hands. The truth of the matter is that we did no more than pay lip service to the miracle of Pakistan and the greatness of its founder.

### **Three categories of detractors:**

There have been three categories of the Quaid's detractors. The first category apparently belonged to the circle of followers who nonetheless felt frustrated on personal grounds. The second belonged to political parties which opposed the Pakistan Movement. The third comprised those elements who not only fought Pakistan until the last, and still miss no opportunity to discredit its genesis. They are even ready and willing to be used by foreign powers. Obviously, the first category is most

saddening. But how can one explain the criminal administrative neglect which attended the tragic circumstances of the Quaid's death. Then what could be shabbier than to entrust the life and work of a man who performed the unparalleled feat of creating a new Islamic State to a third rate chronicler of royalty's doings! The book could not bring out the dimension or his achievement. But that just seemed the purpose so that lesser men could claim a lion's share. In any case Quaid's memory was consigned to oblivion. He became an unfathomable myth exposed to all sorts of misconstructions. And what a rich crop of confusion we have reaped from the seeds of innuendoes that we sowed! Again, the treatment of Muhtarama Fatima Jinnah was not in accord with either the position due to her as the constant companion of the Quaid or the high esteem she earned in her own right by the services she rendered to the cause of liberation and independence. Begum Liaquat Ali not only overshadowed Miss Jinnah's rightful preeminence, the change of order in priorities also made for a change of order in values.

### **Unmitigated failures**

The Quaid was ill-served by his followers in another way. The younger men he picked up, Mumtaz Daultana, Nawab Mamdot, Sardar Shaukat Hayat, Qazi Isa, all proved unmitigated failures as public leaders. Like Prince of Denmark, Daultana was never able to answer the questions: what to do? He was more often than not, through indecision, obliged to bury his head in the sand of intrigue. Never a man of staunch character, he almost lost faith in the country and so demeaned himself as to accept ambassadorship from Bhutto's unpatriotic hands. Mamdot was too simplistic and aristocratic to know the art and hazards of politics. As for Qazi Isa the less said the better. But Sardar



Shaukat Hayat made himself conspicuous by a rare combination of negative qualities. He tried to make his failing by excelling in garrulousness. For want of an appropriate epithet the papers currently describe him as the "Buzerg siyasatdan" (the elderly statesman) which he exploits by issuing as many irresponsible statements as he can on the grounds of being an eyewitness.

#### **Odd antics, strange bed-fellows:**

The Sardar started his political career rather dramatically. He became a minister in the Punjab by no worthier claim than being son of his father. On the death of Sir Sikandar Hayat Khan he was wafted from a military barracks to the Assembly Chamber. But as the Muslim League movement gained momentum, he found it too hot to keep company with Uncle Khizar, and jumped out of the Ministerial benches to ride the high tide of the Pakistan Movement and was over night transfigured into Shaukat-i-Punjab. Since then he has relied on dramatic moves to catch public notice and has thus been driven to odd antics and strange bed-fellows. For instance, even though a Muslim League President, he went all the way to Jalalabad to receive the deserter Ghaffar Khan on return from Afghanistan. Similarly, he affects brotherly affection for Wali Khan and the more the "Khudai Khidmatgar" speaks against Pakistan and the Quaid the more enthusiastically he pats his back to prove his fraternal bonds. And in this unrestrained euphoria, he has said things which are highly injurious to the national cause.

#### **'Personal opinion'**

His latest obiter dicta that in his "personal opinion" the Quaid should not have become Governor-General and that

instead he should have offered it to Lord Mountbatten who desired it, falls in that category. How much the Sardar's "personal opinion" counted in the counsels of the League's High Command is a matter of conjecture but it certainly amounts to an insult to the Quaid that fault should be found with a decision which was taken with great and characteristics deliberateness in circumstances when the future of the Muslim nation hung by a thin thread. And which proved momentous but for it, the partition of the subcontinent might have been undone. And we were in danger of losing the battle which we had won after immense sacrifices and struggle. The fact is that the British and Congress had agreed to the principle of Pakistan most reluctantly. Until the end the Zonal Scheme was being forced upon us. But having lost ground on partition, they were keen to regain India's unity somehow or other Retreat is also a part of war strategy and no one has more expertise in it than the British.

Apparently joint Governor-Generalship was offered to cover the teething troubles of the Partition. But there was a clear sign that a single State auspices of the two countries was being maneuvered to be converted into a unified statehood. Just see the implication of the innocent proposal. With one Governor-General, the diplomatic crops would have naturally been at one center, that is, Delhi. Again one Ambassador, say from the United States, would he represented his Government at that center. Thus foreign services would have perforce been co-ordinated. And they would logically involve one policy. Now what is the worth of independence and sovereignty of a country which has no window of its own on the world abroad? Any one Government which wants to establish itself in the country must first obtain foreign recognition. Even governments in exile primarily float on that count. And this unification in foreign

affairs would have certainly spread to other spheres. The trend would have gradually extinguished the clear line of inter-State demarcation drawn by Partition and forged the nucleus of an All-Indian Federation or Confederation which was the hallmark of the Zonal Scheme.

Now imagine such an end being reached after the Quaid was no more. Who would then have had the power and authority to resist? Certainly not those who after him let the country come to the brink of a split! By accepting Governor-Generalship, the Quaid did not seek to fulfill ambition for office. He could have had any office long before. He did so only to put the seal of finality on Partition. He wanted to make sure that there could be no reversal of what had been accomplished. That is why he said: "Pakistan has come to stay". Had Mountbatten succeeded in snatching Pakistan's Governor-Generalship for himself, perhaps India would not have felt the need for other, aggressive designs.

#### **Attack on Muslim nationhood**

Again, in a craze for showmanship, by making a dirty dig at Nawabzada Liaquat Ali Khan, the first Prime Minister and a trusted lieutenant of the Quaid-i-Azam, that since he was a muhajir, he opened the gateway of Khokrapar to facilitate the immigration of Muslims from India to bolster his political position, Sardar Shaukat Hayat Khan has made the same attack on the concept of Muslim nationhood which the Hindus and Sikhs leveled against it, namely, that there could be no separate nationhood on the basis of religion. But the truth is that the Pakistan Movement was equally waged by the Muslims of minority and majority provinces and indeed Pakistan was created on the strength of common Muslim nationhood. Had Muslim

nationhood not been recognized there would have been no partition of India because there was no movement for separation from the provinces as such. And certainly three of the constituent Pakistani provinces would not have been divided along Muslim and non-Muslim lines. The Muslims from India had every right to migrate to Pakistan of their making. After all, the Quaid was also a refugee from Bombay where he lived all his life. According to the Sardar's notion he should have been stopped from coming to Karachi.

#### **Second category**

The second category, including Jamaat-i-Islami, Jamiat-ul-Ulema-I-Hind and Majlis-i-Ahrar who had outright opposed Pakistan quietly acquiesced in its emergence. They had no choice, especially those who had no alternative but to live in Pakistan. They lay low while the Muslim League stayed strong. But the moment it showed signs of weakening and erosion, these erstwhile opponents began to stir themselves into non-conformist activity. Ironical as it sounded that they should have made their bid in the name of Islam- precisely the ground on which they had refused to join the freedom movement – they counted on the changeability of political climate which has the knack to turn popular leaders unpopular and vice versa. There was nothing wrong in the emphasis laid on Islam. That was what it should be, that was the logic of Pakistan's creation. However, the difference that their leadership made was that Islam was shorn of the flesh and blood of the circumstances in which it made its upsurge in the subcontinent. It was presented without the rich background of the Muslim history of India, without reckoning with the excruciating vicissitudes of Muslim resurgence under the British, without the struggle of the Pakistan Movement and certainly



without accounting for the epoch-making contribution of the Quaid-i-Azam. According to their interpretation, it appeared as if Pakistan was born in a vacuum. Cut asunder from the umbilical cord of the men and women who were involved. Pakistan sounded like mythical entity identified only by the ethereal spirit of a theory. It could be felt by the soul but not seen by the senses. An idea is no doubt important; it is the beginning of things. But unless an idea is put in the body of a movement, it does not have leg it does not gather moss. The nature and significance of an idea can be known only by taking into account the repercussions it unleashed. Just as the shape and a figure of a man shows the record of genealogy behind him, the essence of a political movement cannot be understood without studying the setting of its inception and growth.

### **Barebones of a doctrine**

When the Pakistan Movement, under this interpretation, was reduced to a barebones of a doctrine unalloyed by human association - because such a reference necessarily excluded them - it got emaciated. It had no effect on the minds of the younger generation who didn't participate in it. And it became dispensable. Didn't the Bengalis dispense with it to separate into Bangladesh? Haven't others waged similar claims in the west albeit couched in demands of provincial autonomy? Thus while these schools didn't reject Pakistan, they did everything to devalue and deflate the historic importance of the genesis of Pakistan so that in terms of substance, it looked hollow. It didn't seem to have roots in reality.

But perhaps the greatest danger comes from the third category. It is as relentless in snuffing out the spirit of Pakistan

from inside as our enemies are trying to destroy its integrity from outside. Take Wali Khan's latest stunt. He has started a controversy for no rhyme or reason. What is the point of attributing Pakistan's creation to Zafrulla Khan except to denigrate the significance of its emergence. He says that he has produced the document as a student of history. May one know since when has he launched upon the career of a research scholar? In any case, it has been shown in these columns that this plan had nothing to do with Pakistan. While the Pakistan demand was based on the concept of Muslim nationhood and right of self-determination to the creation of an independent and sovereign Muslim State, Zafrulla envisaged an All-India Federation. While Pakistan signified two States, Zafrulla wanted one Indian State, Akhand Bharat.

### **Opposite to what Wali divined**

It has also been shown that the idea of Pakistan was much older, it was not born in 1940. It is also patent that the British opposed the scheme tooth and nail because it jettisoned their postwar global strategy which was aimed at holding down the Muslim Middle East in partnership with a Hindu dominated India. Look at the literature it has produced on the subject and look at the statements its leaders have made. They are all without exception censorious of the idea of Pakistan and the role of the Quaid. In fact the motive behind Viceroy Linlithgow's sponsorship of Zafrulla's plan was wholly opposite to what Wali Khan has divined. Over the decade in the Thirties, the Pakistan Idea was fast catching Muslim imagination. But it militated against the British interest. They wanted to contain it before it went too far in mustering popularity. It was therefore planned to use Zafrulla as an advocate of the Muslims, knowing full well



that as a member of the Ahmadiyya community, he could not favor an exclusive Islamic State but the plan misfired. The Quaid pressed on with the Lahore Resolution which took the world by storm.

The question is Yet why has Wali Khan after a lapse of 42 years resurrected Zafrulla's plan to show that he was the architect of Pakistan? If it were such an important issue, why was it not raised before? Although Wali Khan affects to be anti-British, he visits no place oftener than London and stays there for months. Moreover, he has friends there in high circles who could have long ago put that document in his hands. In any case, why is he at pains to fly in the face of facts which prove up to the hilt that the Muslim had to struggle hard to achieve Pakistan? There was certainly no Pakistan in the offing until the very end, after Mountbatten had failed to move the abandoning of it. The matter became pressing only because the British position had become untenable and Wavell had drawn up a quittal plan as early as October 1946. Again, the Quaid's character is well-known. Even his worst enemies did not accuse him of devious and underhand means, much less flunkeyism such as Wali Khan attributes to him.

### Softening-up process

However, the important thing is not to demolish Wali Khan's insinuations but to probe into his inspiration to start this here precisely at this juncture. One thing is certain, while it is calculated to give heart to those who are out to hack the foundations of the country from who are master-minding evil designs from abroad. It is an attempt at initiating a softening-up process which paves the way for the main onslaught. The Awami

League Movement was an essential precursor for the Indian attach Pakistan has been always beset with difficulties but they have been aggravated in recent days. While the Soviet Union has occupied Afghanistan and India remains un-reconciled, the Middle East, with which we are ideologically and geopolitically bound is in turmoil. Above all, the United States maintains a balance of posture towards South Asia and is in any case situated at a forbidding distance from us. In these circumstances it the people's confidence is sought to be shaken in the sanctity of the country's genesis and the genuineness of the founding leadership, the aim can be anything but patriotic. The aim indeed is to ease the way of our enemies. Wali Khan is not indulging in a research of history he is out to create a climate of dismay and uncertainty. He is playing the same sinister game internally which his father is playing externally.

Wali Khan has however taken the stage against a certain background. Not only has over the years the Muslim League been disintegrated and the true ideology of Pakistan eroded but the memory of the Quaid has been consigned to limbo. The concept of Muslim nationhood and the Quaid were the two pillars of Pakistan. No one has done anything to strengthen these pillars. With the deliberately generated amnesia over the national horizon ground has been prepared to rewrite history. This is a dangerous move. If Pakistan were conceived by Zafrulla, it might turn some sections of people apathetic to the imperatives of its defense. Others might feel frustrated by the other insinuation Wali Khan has made, namely, Pakistan was not a division of the subcontinent but of the Muslims. He wants the same Muslim unity to prevail here which the Muslims of Central Asia enjoy under Soviet subjugation. No double a mischief is afoot. It is for the Government to nip it in the bud.

### Success hinged on one man

The Government can however be effective only if it put things in a proper prospective. First of all must be emphasized the historic landscape of the Pakistan Movement, the warp and whoop of its fabric, so that it might be clear that it was the fate of the millions who plunged into the freedom struggle which was at stake. If for the fault of the Mughal Kings, the Muslims became slaves of the British for nearly two centuries, any failure on the part of leadership in the Forties would have sold them down drain forever because the Hindu domination would have been a permanent dispensation. Islam is relevant to Pakistan only because Muslims profess it. It could be practiced in Pakistan only because they have been rescued from bondage. Therefore priority lies with Muslim nationhood which gave them right to be free. All this would have been impossible of achievement if there had been no Quaid to lead the movement. The success of the freedom struggle hinged on the character of one man who not only tirelessly toiled even as he hid a wasting disease within his breast but also gave his all energy and money, in the service of his nation. Unless these facts are ingrained in our minds in the mind of youth in particular—Pakistan's foundations will give under. There is need that true picture of Pakistan be painted. And above all, the Quaid should be painted as he was for his image has been distorted beyond recognition. Anyone who wants to destroy Pakistan must first attack the Quaid. He is the pivot and the symbol. The Government has ordained that the ideology of Pakistan could not be brought into disrepute. Equally it should make it a penal offence to defame the Founder of Pakistan. The State can be secure only in an ethos where it is known what is done and what is not done and cannot be allowed to be done".(

The Pakistan Times, Lahore January 29, 1982)

Sir Zafrulla was in Lahore and he wrote a rejoinder to keep the record straight. His letter to the editor is reproduced here

3rd February, 1982

The Editor,  
PakistanTimes,  
LAHORE.

Sir,

There has recently been aroused considerable interest in the background of the emergence of the concept of Pakistan in which context two important contributions have appeared in the issues of Pakistan Times of 23rd and 29th January. In the editorial comment to the first of those contributions and in the text of the second certain affirmations have been made which are not entirely correct and are likely to lend themselves to misunderstanding and misinterpretation. I would crave your indulgence that my submission on these, aspects set out below, which I fear would necessarily be somewhat detailed, may be published through your gracious courtesy in an early issue of Pakistan Times.

I have throughout repeatedly affirmed both by word of mouth and in writing that so far as human effort is concerned, Pakistan was established through the devoted efforts of a single individual. The late Quaid-e-Azam Mohammad Ali Jinnah. He



alone revived the moribund All-India Muslim League and welded it into an active and effective political organization with himself as its acknowledged and dynamic head. In the face of what appeared to be insurmountable difficulties, he achieved the objective that he had set himself and though he was loyally and faithfully assisted by several, the credit for the achievement belongs to Mr. Mohammad Ali Jinnah alone. On that there cannot be the least doubt in any quarter.

So far as the concept of Pakistan is concerned, the course of its emergence must be appreciated against its true perspective. The very title Pakistan itself has a history which is today not kept clearly in mind and gives rise to misconception. This term was invented by Ch. Rehmat Ali when he was studying at Cambridge and the scheme that he set forth under that title continued to be referred to as Pakistan though it had little connection with the concept of Pakistan as it emerged in the shape of the Muslim League Resolution of 23rd March, 1940. The basic feature of Ch. Rehmat Ali's proposed Pakistan was the total exchange of Muslim and non-Muslim population of the sub-continent India so that the entire Muslim population of the sub-continent should move into the North-Western region of the sub-continent and the non-Muslim population of the region should move into the large part of the sub-continent. This was an utterly impracticable scheme which would, if attempted, have inflicted untold misery and suffering upon the Muslim populations of the United Provinces, Bihar, Bengal, Assam, Orissa, Central Provinces, Madras, Bombay and of the India states outside the North West. Indeed, Ch. Rehmat Ali himself came to recognize this and therefore set forth a whole cluster of states under the titles, Bungistan, Usmanistan etc. this concept of Pakistan as it finally emerged under the leadership of the Quaid-e-Azam, intact when

Pakistan was established, Ch. Rehmat Ali condemned it in the strongest terms and applied to the Quaid-e-Azam a most insulting epithet.

Here I would beg your permission to make a digression which is very relevant to the proper appreciation of that which follows. I enjoyed the privilege and honor of being associated in a humble capacity with the Quaid-e-Azam during the last eighteen year of his life. I was a member of the Round Table series of conferences 1930-1932, in the first two of which Mr. M.A. Jinnah was senior member. The Muslim delegates to the Round Table conference from British India worked as a team under the leadership of His Highness The Aga Khan and their individual participation in the discussions was in accord with the policies that were agreed to in the meetings of the delegation. I venture to submit that my association with the Quaid-e-Azam grew in intimacy as time passed and I began to enjoy his trust and confidence. This aspect of our relationship continued to be deepened and strengthened during the years when I held office as a member of the Governor-General's Executive Council (1935-41) while the Quaid-e-Azam was the leader first of the Independent Group and later of the Muslim League party in the Indian Assembly. Some notion of the generous courtesy that the Quaid-e-Azam extended to me may be gathered from the reference that he made to my work and his own attitude towards me during the debate on the Trade Agreement which as Commerce Minister I had negotiated with the United Kingdom to replace the so-called Ottawa Trade Agreement in 1938. The Quaid-e-Azam was pleased to describe the new agreement as "miles better, tons better" than the old agreement and referred to me as his "political son". I may add that throughout our association together both before and after independence on no



occasion whatever any difference arose between us and that I continued to enjoy his full trust and confidence. Reference may be permitted to certain obvious marks of his trust and confidence in me, unworthy as I deem myself to be. When the scheme of partition was finally announced on 3rd June, 1947, I resigned from my seat on what became the supreme court of India, which I was the senior most judge, and moved to Bhopal at the invitation of His Highness Nawab Hameedullah Khan in the capacity of his Constitutional Advisor. Within less than three weeks the Quaid-e-Azam sent for me and told me to present the Muslim League case before the Punjab Boundary Commission which was due to be set up shortly. There was no dearth of able and experienced Muslim lawyers in Lahore, but the Quaid-e-Azam chose to send for me from Bhopal to undertake that heavy responsibility. That he was fully satisfied with the manner in which I had been enabled to discharge the responsibility that he had laid upon me, is vouched for by the fact that a few weeks later as Governor-General of Pakistan he sent for me again, this time to Karachi, and directed me to lead the Pakistan delegation to the General Assembly of the United Nations. One of the members of the delegation was Mr. Hasan Ispahani, Pakistan's Ambassador to the United States. In the middle of the session on receiving intimation that I was likely to be needed in India to represent Pakistan before the Assets and Liabilities Tribunal, he wrote to the Quaid-e-Azam that my presence in New York throughout the session was indispensable. The Quaid-e-Azam wrote back to Mr. Ispahani: "As regards Zafrulla, we do not mean that he should leave his work so bring as it is necessary for him to stay there, and I think he has already been informed to that effect, but we are very short of capable men, and especially of his caliber, and every now and then our eyes naturally turn to him for various problems that we have to solve", It was after my

return from the United Nations that the Quaid-e-Azam directed me to move from Bhopal to Karachi and I was appointed foreign Minister of Pakistan, an office that I had the honor to hold for about seven years. The Quaid-e-Azam determined that I should rank next to the Prime Minister in seniority.

In the editorial comments in column 1 of page 5 of the Pakistan Times of January 23, 1982 it is stated that the Quaid-e-Azam was instrumental in procuring the election of Allama Sir Mohammad Iqbal as the President of the Muslim League at the Allahabad session in 1930 as the Quaid was anxious that Allama Iqbal should have an opportunity to express his views on the creation of a Muslim state before the Round Table Conference was held in 1931.

Incidentally, I succeeded Allama Sir Mohammad Iqbal as President of the Muslim League the following year. May I point out that Allama Sir Mohammad Iqbal was himself a member of the second and third Round Table Conference in 1931 and 1932 and said not a single word on the subject of a Muslim state whatsoever, one way or the other. Moreover, the Quaid-e-Azam himself was a delegate to the first and second Round Table Conference in 1930 and 1931 and he did not make the slightest reference direct or indirect, to the setting up of a Muslim state. In course of the same editorial comments it is stated that the idea of a Muslim State was given an airing during the Round Table Conference and that I dismissed it as "chimerical and impracticable". It is true that during a sitting of the Round Table Conference, I was asked our views on "Pakistan", which in everyone's estimation at that time was Ch. Rehmat Ali's scheme of total exchanges of populations and I described it as "chimerical and impracticable". The Quaid-e-Azam was himself a member of the Muslim Delegation to the Round Table

Conference and heard my description of Ch. Rehmat Ali's "Pakistan" and took no exception to it.

The editorial comment proceeds: "Ch. Rehmat Ali had also drawn up a multi-division scheme of the sub-continent". This comment again is somewhat misleading. Ch. Rehmat Ali's scheme was the only one which was referred to, albeit casually, as "Pakistan" in the sitting of the Round Table Conference and the Muslim Delegation's view of it was expressed by me that the scheme was utterly impracticable.

I would now offer some comments explanatory of my note which was referred to in Lord Linlithgow's letter of March 12, 1940 to Lord Zetland. This note was prepared in the last half of February 1940 and was submitted to Lord Linlithgow in time for it to be included in the official bag previous to the one by which Lord Linlithgow's letter of 12th March was dispatched. A perusal of that letter and a careful perusal of the note itself would put it beyond doubt that it was prepared at my own personal initiative and that I alone was responsible for every part of its contents. Lord Linlithgow had nothing whatever to do with it.

In the editorial comment it is stated that the note having rejected both the principle of Pakistan, as well as the separation scheme, advocated the idea of an All-India Federation and that at best the plan set out in the note bears resemblance to the Zonal Scheme which was produced by the Cabinet Mission in 1946. This comment is misleading in several respects. What is meant by "the principle of Pakistan" which the note rejects? At the date of the note the only scheme to which the title "Pakistan" was attached was Ch. Rehmat Ali's scheme, the principle of which was a wholesale exchange of population. The note certainly rejects that principle as the resolution of the Muslim League of 23rd March 1940 also rejected it.

The separation scheme set out in the note was most certainly not rejected by me. As will presently appear, I set it forth as the only satisfactory and acceptable solution of the constitutional problem.

As regards the separation scheme, there is a grudging admission that it "bears resemblance" to the Zonal scheme of the Cabinet Mission propounded in 1946. In this connection it must be remembered that the Cabinet Mission Plan was, under the guidance of the Quaid-e-Azam, accepted by the Muslim League. The editorial comment's omission in this respect beclouds the perspective.

The comment proceeds, "the Pakistan demand on the contrary, was based on the twin concepts of Muslim nationhood and its right to self determination in an independent and sovereign state". I venture to submit that my note sets forth primarily and emphatically exactly those very concepts.

The concept of Muslim nationhood is spelt out in great detail in the note and sums it up in column 7 page 5 of the Pakistan Times of January 23 as follows: "In short, Muslims throughout India possess and enjoy in common all characteristics which go to form a nation and scarcely any of these are shared by them with the Hindus, so that when the Muslims claim that they are not a minority in the ordinary sense but constitute a distinct nation, they do not employ a mere figure of speech but give expression to a reality and the sooner that reality is accepted as the basis of any settlement between the Hindus and the Muslims the sooner it will be possible to arrive at a practical acceptable settlement:

In the next column it is stated: "India is not one country but a collection of countries and the population of India does not



consist of one nation but at least of two nations, and the only real solution which is likely to bring peace to this distracted country is the acceptance of these facts as a reality".

The note then proceeds:"more recently, the scheme that has received the largest measure of support from the Muslims is what we may describe as the scheme of separation, rather than the Pakistan scheme. The chief difference between these two schemes is that an essential ingredient of the Pakistan scheme is an exchange of populations and that the separation scheme involves no such impossible and impracticable element. Briefly, the separation scheme is that there should be a North-Eastern Federation consisting of the present provinces of Bengal and Assam, and a North-Western Federation consisting of the Punjab, Sind, NWFP, Baluchistan and frontier Tribal Areas".

It would be obvious to the dullest intelligence that the Pakistan scheme referred to here was the Rehmat Ali scheme which still bore the title "Pakistan".

Now let us look at the resolution of the Muslim League of March 23, 1940. The crucial paragraph of that resolution sets out that no constitutional plan would be workable in this country or acceptable to Muslims unless it is designed on the basic principle that the areas in which the Muslims are numerically in a majority, as in the North—Western and North—Eastern Zones of India, should be grouped to constitute independent states.

It will be noticed that nowhere in this paragraph or indeed in the whole of the remaining paragraphs of the resolution is the expression "Pakistan" employed, and that the portion quoted above sets out exactly the scheme adumbrated in my note as the Scheme of Separation.

The expression Pakistan was applied officially to this

scheme by the Muslim League Convention of April 9, 1946 in what is known as the Delhi Resolution which provided, inter alia, " The zones comprising Bengal and Assam in the North—Eastern and Punjab, N.W.F.P., Sind and Baluchistan in the North- West of India, namely Pakistan Zones, where the muslims are in a dominant majority be constituted into a sovereign independent state and that an unequivocal undertaking be given to implement the establishment of Pakistan without delay".

Here the two zones are spelt out exactly as in my note except that by some oversight the frontier tribal areas are not included within the North-Western Zone.

The editorial comment that I had rejected my scheme of separation along with Ch. Rehmat Ali's utterly impracticable scheme of a total exchange of populations reveals that the comment proceeds from a failure of careful perusal of the whole of my note. In column 1 of page 6 of Pakistan Times of January 23, 1982 my note states," We would, therefore, appeal with all the emphasis at our command to our sister communities and to the British to undertake a sympathetic examination of the whole problem on this basis and to evolve by common agreement a scheme which, should secure the essentials which we have indicated. We have no doubt that Muslim opinion throughout India would rally round this scheme and that it is likely to prove the only satisfactory solution of this most troublesome question". The paragraph concludes with" We hope, therefore," that wise statesmanship will accept the realities of the situation and try to construct the future of India on that basis rather than upon the shifting quick sands of false pretense and make believe.

At the end of the next paragraph it is stated that in my opinion the Muslims would be extremely unlikely to identify



themselves with any scheme which does not contemplate the setting up of the North-Eastern and the North-Western federations.

It is true that having forcefully and emphatically put forward the concept of the North-Eastern and North-Western Federations as the only one to prove likely to be acceptable to the Muslims, the note proceeds to examine as a poor and unsatisfactory alternative the possibility of an All-India federation pointing out that, "the federal scheme as set out in the 1935 Act would be to be radically modified before it can possibly afford even a basis of discussion so far as the Muslims are concerned. It would be futile to proceed with an examination of that scheme and to suggest modifications unless this fact was recognized and accepted."

The note then proceeds to carry out a minute and detailed examination of the federal provisions of the 1935 Act and their implications and the dangers and risks that the Muslims would expose themselves to in a constitution based on the provisions of that Act. Extensive safeguards are proposed though they are described only as palliatives and not as real and effective guarantees. For the purpose of this letter, however, it is not necessary to enter upon any description or examination of them.

As Lord Linlithgow's letter of March 12, 1940, to the Secretary of State for India specifically states, a copy of my note had already been furnished to the Quaid-e-Azam.

In column 2 of page 7 of the Pakistan Times of January 29, 1982 under the caption 'Paint me As I Am', it is stated: "while the Pakistan demand was based on the concept of Muslim nationhood and right of self-determination to the creation of an independent and sovereign Muslim state, Zafrulla envisaged an

All-India federation. While Pakistan signified two states, Zafrulla wanted one Indian state, Akhand Bharat". In the same column it is stated later on that the Pakistan idea militated against British interests and they wanted to contain it before it went too far in mustering popularity. "It was therefore planned to use Zafrulla as an advocate of the muslims, knowing full well that as a member of the Ahmadiyyah Community he could not favour an exclusive Islamic State."

As I have demonstrated, I trust conclusively, the whole emphasis of my note referred to in Lord Linlithgow's letter of March 12, 1940 was on the reality that the Muslims in India were a distinct and separate nation and that the only satisfactory and acceptable solution of the constitutional problem would be the setting up of the North-Eastern and North-Western federations which was exactly the demand that was put forward shortly after in the resolution of the Muslim League of 23rd March 1940. The concept of two nations and the scheme envisaging setting up of the North-Eastern and North-Western federations have been set out in such detail and with such clarity in my note as is not to be found in any other contemporaneous or antecedent document or statement.

The insinuation that my note was prepared at the suggestion of Lord Linlithgow and was sponsored by him so as to play down "The Pakistan idea which was fact catching the muslim imagination" is I regret to have to observe wholly false and unfounded. It is clear from Lord Linlithgow's letter to Lord Zetland that Lord Linlithgow had nothing whatever to do with the preparation or contents of my note, the entire responsibility for which rests on me.

I may conclude with the observation that the fact that I had spelt out the scheme of the North-Eastern and North-Western

federations in my note does not diminish by one iota the credit due to the Quaid-e-Azam alone for the achievement of Pakistan.

I beg to remain Sir,

ZAFRULLA KHAN

## Part II

January 1942 - December 1947

The British Government has recently published secret documents concerning the "Transfer of Power" in India from January 1, 1942 to August 15, 1947. In this particular period, Sir Mohammad Zafarulla Khan, was a Puisne Judge of the Federal Court of India. He had been very active in the political field for many years since he was first elected to the Punjab Legislative Assembly in 1926. He was a member of the Viceroy's Executive Council, the only member ever to be chosen to serve on the Council for two consecutive terms. It was during his second tenure that the Viceroy, the Marquess of Linlithgow decided to appoint him the very first Agent General in China. This appointment brought with it the opportunity to be able to render useful service to the freedom movement which was gaining momentum from after. As a Puisne Judge he was, however, not in a position to be active in the political field. This was a God given opportunity. Sir Zafarulla, in his autobiography 'Servant of God', written in the third person narrative, has related the circumstances leading to his appointment. "On the night of the 11th June ( it should be 1941 ) he dreamt that he was in the office room of his residence, busy with his papers, when door to the verandah was pushed open and his cousin, Inayatullah, came in with a bright smile on his face. The dream was so vivid that when he got up in the morning he felt ready to meet with his cousin at breakfast. He then recalled that he had only seen him in his dream. The interpretation of the dream was clear. The cousin's name meant divine favor. Two nights later he met in a dream a friend whose name happened to be Inamullah, meaning divine bounty. He thought the sequence was significant. On the night of the 15th June, he called on a friend in dream whose name was the same as his own, meaning success or victory

bestowed by God. He was convinced that the dreams presaged some development which, though it might not appear so on the surface, was in the nature of divine munificence and would lead to some success.

The next day was Monday, the day of his weekly meeting with the Viceroy. As he had nothing to discuss with the Viceroy, he intimated to the Viceroy's Private Secretary that he would not be see up the Viceroy. However, the Private Secretary intimated that the Viceroy desired to mention a matter to him, so he had better come up. The Viceroy opened the conversation with: ' On Sir Shah Sulaiman's death (Sir Shah Sulaiman was a Muslim Judge of the Federal Court of India) the Chief Justice and I could not agree upon his successor. As a Muslim had to be appointed the Chief Justice told me he would not recommend any one except you. I maintained I could not spare you from the Cabinet. You are carrying heavy responsibility and I rely on your advice in many matters. I would agree to the appointment of anyone else whom he might recommend, with my eyes shut. But he would not accept that. So Sir John Beaumont was appointed temporarily to fill the vacancy. Now the Court is about to go into vacation, and the Chief Justice insists that he must know who will be his new colleague on the re-opening of the Court. We still do not agree; so we have decided to abide by your choice. If, as I hope, you do not wish to go to the Court, the Chief Justice must recommend someone else. If you should prefer to go the Court, I must reconcile myself to the loss. Think over the matter, and let me know your preference when you come to see me next week?"

I do not need a week to think over the matter.

Ah! I am so happy you do not wish to go.



No Sir, I would rather go.

I am disappointed. If that is your choice, I must abide by my understanding with the Chief Justice. But do tell me why do you wish to go to the Court. You have still four years of your second term on the Council; and at your age you can look forward to almost anything in the new set up in the country. Then why do you wish to go and bury yourself in the back yard of the Court?

Well Sir, maybe it is a matter of temperament.

As you wish; but you will not be in a hurry to leave?

No, Sir, I shall If you permit, carry on with you till the re-opening of the Court after vacation. Well that is some comfort "(1)

After having taken the oath of the office of Puisne Judge of the Federal Court of India, it became difficult for him to be active in the political field or the freedom movement, in which he was so deeply involved.

Then in February 1942, Generalissimo Chiang Kai Shek, the Chinese ruler came on an official visit to India and it was agreed upon to initiate diplomatic relations between the two allies in the war. The Viceroy, after having consulted His Majesty's Government decided to appoint Sir Zafrulla Khan as the first Agent General in China. He wrote a personal letter to him and offered him the post.

The Viceroy's House,  
New Delhi, 25 March 1942

My dear Sir Muhammad Zafrulla Khan,

You will have seen in the Press that the exchange of

representatives between India and China at a high level has been accepted in principle by the Governments concerned. The intention of His Majesty's Government and China is that, until such time as India attains Dominion Status, these representatives should take the same position as that already accorded to Indian Agent General in America, and the American Commissioner in India, that is to say the Agent General will be part of His Majesty's Embassy in Chungking with the personal rank of Minister. There is this possible difference on psychological plane that there should be more scope for cultural ties and affinities between the two great countries of Asia than could be the case elsewhere in the world. And you will not fail to appreciate, too, how vastly important to the common war effort it is during the coming critical months. China should feel that in India she has an Ally who can give effective help in turning the tables against Japan, and how greatly her confidence will be affected by the manner in which and the personality by whom assurances can be given.

It is with thoughts such as these in mind that I have determined, in consultation with His Majesty's Government, to ask you if you will step forward to fulfill this important and difficult role at a critical juncture in the history of India, the Empire and Asia as a whole. That you have been for so long a member of my Government, and that you now sit on the Federal Court, are matters which will not escape Chinese notice, and, apart from other qualities, will incline them to assess rightly the importance which His Majesty's Government, and I may attach to the filling of the new post in a manner consistent with its dignity and importance. I could not of course expect you to renounce your Judgeship in order to go to China, but I understand from the Chief Justice that having regard to the

weighty considerations involved, he would be prepared to acquiesce in an arrangement whereby you would fill the post at Chungking retaining your position as Puisne Judge of the Federal Court, for a period of six months. The next six months will be the critical time, and the important thing is to inaugurate the new arrangements in a worthy manner. There after you would be able to revert to your duties on the Federal Court.

In making this appeal to you I am very fully conscious of the sacrifice I am asking you to make. Chungking, as we know well, is a place of dangers and discomforts, and I understand that it would be inadvisable for the Agent General to be accompanied by his family. In fact, as I see it, the post will be in the nature of an heroic one, and there are few men on whom I feel I could call with confidence to sustain it. If, as I greatly hope, you accept, I need not assure you how greatly my own anxieties will be eased by the thought that the post is held by a tried and valued colleague and Counselor in whom, as our association has so often shown I am able to repose the complete confidence.

A word is necessary about the terms of appointment. The suggestion would be that you would retain your emoluments as a Puisne Judge of the Federal Court (Rs. 5,500 per mensem), free of income tax. Emoluments on this scale are a little higher than the aggregate of those drawn by His Majesty's Ambassador himself, but justification for that result can be sought in the proposal that you should proceed as a Judge, on mission and for six months only, to inaugurate the post. Owing to difficulties of accommodation in Chungking it will be necessary in any case to ask the Chinese Government to make a house available, and Government of India will be prepared to meet the rent and reasonable expenditure on furnishing and so on, as has been done for Bajpai in America. Smaller details could be varied in

the light of experience gained.

I shall naturally be ready to discuss these matters with you at any convenient time. But it is my hope that you will see your way to accept my proposals, and in that event that you will be able to make the journey at an early date.

Yours sincerely,

LINLITHGOW (2)

Sir Zafrulla, reproduced in his autobiography, published in 1983, the details of the Viceroy's letter as he remembered them, almost accurately without having the copy of Viceroy's letter available for reference. I was surprised to read the Viceroy's letter in the documents of Transfer of Power in India 1942-1947. I felt that I had already read the Viceroy's letter somewhere, but I had only seen the strikingly accurate description of the letter in Sir Zafrulla's autobiography. His reaction to the Viceroy's offer was praiseworthy: "There was nothing whatever in the assignment that had the least appeal for a Judge; indeed everything seemed unpalatable. The contrast between a long holiday in Kashmir and prolonged incarceration in Chungking was not very appealing. But the Viceroy's request was a challenge and he had never shirked a challenge. Besides he had received nothing but kindness from the Viceroy, and something was due to the Viceroy in return. He agreed to go." (3)

The Viceroy, The Marquess of Linlithgo, was pleased to inform Mr. Amery, the Secretary of State for India, that Sir Zafrulla has accepted his offer and has agreed to go to Chungking. In his letter, dated 31st March, The Viceroy wrote: "3. After a good deal of thought I decided to ask Zafilla Khan to be India's first representative in Chungking. His term would only



be for six months, but I did not conceal from him the dangers and discomforts which he would have to face, nor my view that the post would be in the nature of an heroic one. I am glad to say that Zafrulla accepted without hesitation, as you will have heard by now. Gwyer made no difficulty about sparing him from the Federal Court, since four months of the time that he will be away will be covered by the Court's vacation. Zafrulla has diplomatic gifts of a high order and I believe that he will be very successful at starting us off on right foot with the Chinese.

The question of emoluments was a little difficult to decide but Zafrulla would obviously have to retain those which he is drawing as the Puisne Judge of the Federal Court, although this would give him a little more than the aggregate of those drawn by Seymour himself. The justification is that he would be proceeding as a Judge en mission for six months only to inaugurate the post."(4)

Sir Zafrulla went to see the Viceroy before proceeding to Chungking and had the opportunity to talk to apprise him of the political and constitutional situation in India. The Viceroy told him that he would be free to write to him about any matter he deemed appropriate to be brought to his notice. Sir Zafarulla took up his new assignment, stayed in touch with developments in India never forgot his prime duty of promoting political and constitutional interests of his countrymen. He wrote a long and frank letter to the Viceroy and appended with that a comprehensive memorandum. His letter and the memorandum have been published as manuscript number 412 in volume II of the Transfer of Power in India. Here they are:

Personal and confidential

Chungking 4, August 1942.

Dear Lord Linlithgow,

When I had the opportunity of discussing the political and constitutional position in India with Your Excellency on the last occasion, you were good enough to intimate that I would be at liberty to submit to Your Excellency any observations that might occur to me on the situation and which in my opinion might be of help to Your Excellency. I am taking advantage of that permission to submit for such consideration as they may deserve a few odds and ends that have occurred to me in the form of a brief memorandum which I enclose.

I was very disappointed to observe from such Indian papers as are available to me here that the latest reconstruction of Your Excellency's Council has not met with the response that it deserved. I would venture to observe, if I may be permitted to do so without being guilty of impertinence, that under the very difficult conditions with which Your Excellency is faced Your Excellency has succeeded in getting together a very representative Council with a large number of extremely able and efficient public men on it. The appointment of Sir Ramasawami Mudaliar as the senior most member of Your Excellency's Council to represent British India on the Imperial War Cabinet is also unexceptionable. In the absence of a settlement between the principal political parties, I do not know how Your Excellency could have improved upon the present personnel of your Council. Individual opinions may differ with regard to one or two members, but those who may be inclined to criticize these appointments are often not aware of the number



and complexity of the considerations which must be given due weight to by Your Excellency in making your choice.

I note that there are now eleven Indian Members on Your Excellency's Council ( in one of my letters to Caroe I had said the number was ten but at that time I was not aware that Sir Ramaswami Mualiar would retain his rank as Member of Council while discharging his duties in London). Out of these eleven, only three are Muslims. This proportion may be somewhat disappointing to the Muslims. In the past, Muslims have always held one out of three Indian memberships and last year when Your Excellency expanded your Council you were pleased to appoint three Muslims as against five non-Muslim Indians. Now that the total number of Indian members has risen to eleven, as against eight, the number of Muslims remains the same. I am aware that Your Excellency is not committed to any particular proportion and that these arrangements are only transitional, nevertheless I venture to submit that if it could be avoided certain elements among the Muslims should not be afforded the opportunity of hinting that Your Excellency had not been sympathetic towards the Muslims. I would, therefore, suggest that when an opportunity offers itself, Your Excellency might take advantage of it to appoint one more Muslim to your Council.

In this connection, the following suggestions are submitted for Your Excellency's consideration but, of course, Your Excellency would know how best to make up the deficiency. All that I am concerned about is that the Muslims should not feel that their interests have been neglected. I have complete confidence that Your Excellency would yourself devise the best method of reassuring them on the score. My suggestions are: (a) that when Sir Reginald Maxwell completes his term the resulting

vacancy might be filled by the appointment of Mr.M.S.A.Hyderi, who has proved his ability and merit in various appointments which he held in the Government of India. I do not imply that he should necessarily take over Sir Reginald Maxwell's portfolio though I have no doubt that if he was trusted with it he would discharge his duties to Your Excellency's complete satisfaction; (b) failing (a) Your Excellency might consider the desirability if including Sir Mirza M. Ismail in your council at a suitable opportunity offering itself. I am not aware of the nature of the prejudice that might have existed against Sir Mirza Ismail in the Political Department or any other quarter, but I have known Sir Mirza Ismail for a number of years and have the highest opinion of his ability and merit. I also think he is one of the most upright Indians that I have come across and I venture to submit it would be a great accession to strength to your Council if Your Excellency could bring yourself to consider him favourably for appointment; (c) failing (a) and (b) Your Excellency might consider Mr. Ghulam Mohammad, till lately Additional Secretary in the Supply Department and now Finance Member of H.E.H the Nizam's Government. Mr. Ghulam Mohammad is a comparatively young man but possesses great ability and drive and I think, would in practice fully justify his choice. Perhaps his comparative lack of years might even be regarded as a merit as a large number of the present Members of the Council are not open to that accusation. Being a member of one of the services, Mr. Ghulam Mohammad would also fulfill the statutory condition of ten years' service under the Crown in India.

Yours sincerely,

Zafrulla Khan.

(The Viceroy noted P.S.V.-- some interesting helpful stuff. 15.8.)

Enclosure

Confidential

## MEMORANDUM

The world is moving fast, but in some respects it is likely to move even faster after the cessation of hostilities. Constitutional and political changes in India are likely to come with a rush after the war, and one of the gravest problems that India will be faced with whether the administrative machinery that has served her so admirably hitherto is able to withstand the drastic changes that are bound to be introduced so as to go on functioning with reasonable efficiency. India's right to the framing of her own constitution after the war has been conceded, and it is possible that some understanding between the different political parties may be arrived at by virtue of which they may be able to take advantage of this offer. It would be a very bold speculation to attempt to forecast even the bare outlines of the future constitution of India, but what is reasonably certain is that as soon as the major parties are able to arrive at an understanding they are bound to insist upon the complete elimination of the British element from the Services. Let us hope that if this demand is formulated it will be accompanied by a fair offer of compensation and pensions, & etc., that would not secure the administrative machine against the violent disturbances to which it is bound to be subjected as the result of any such wholesale withdrawal. Is it possible to do anything now to minimize the effect of the shock when it comes? It may be that the wholesale withdrawal of British personnel may be postponed for a few years, but even assuming that, the period from now onwards till the change takes place will be so short that anything that is likely

to operate to reduce the intensity of the shock must be put in hand immediately. This is the aspect of the question that I am anxious should be studied systematically and with care so that a complete scheme may be evolved and put into operation at an early date.

I am not in a position to be able to put forward a scheme and indeed it is a task which would require the co-operation and interplay of many minds and the pooling together of a great deal of experience, but it is a task which can no longer be shirked and I venture to submit respectfully it be undertaken at once.

I have a few tentative suggestions to offer in this connection which to my mind are so obvious that they could be adopted forthwith while the main problem is being studied and a complete solution is being devised. Some of these suggestions may appear in the eyes of those who have a greater experience of these matters than I can claim to possess as foolish and impracticable, but I venture to put them forward for what they are worth.

If it is realized that the change that I have indicated above is bound to come, and is bound to come at an early date ( and I submit that is the only honest assumption that can be made, having regard to conditions with which we are faced today), then it must be recognized that till some firm understanding is arrived at and a clear-cut policy is evolved with regard to these matters which is acceptable to the British as well as Indian sides, it would be most unfair to India and to Britain as well as to the individual officers concerned to go on with British recruitment into the higher Services except where it is absolutely unavoidable. To touch upon only one aspect of the matter, the larger the number of the British officers at the date when complete Indianisation has to be put into effect the greater the



administrative chaos and confusion that is bound to result there from. It could perhaps be argued that, realizing that, those who are at the helm of affairs in India will act reasonably and will be willing to adopt some scheme of gradual substitution of Indian for British personnel. I think we may assume that for a long time to come the Indian National Congress or some other body with similar political doctrines will continue to be the principal political party in India and that when the effective transfer of power takes place it will be that party that will come into power. Knowing their doctrines and sentiments in this behalf I have no hope whatsoever that they will be willing to stay their hand and put in effect some scheme of gradual substitution. I cannot therefore, get rid of the conviction that pending a solution acceptable to all sides regular British recruitment into the services should be suspended forthwith, to be resumed only, if it is to be resumed at all, after a settlement of this question has been arrived at between the British and Indian sides. If this is decided upon an announcement to the effect that such recruitment is for the present suspended would, I think, have very good effect both on India and outside. ( The Viceroy noted PSV. Worth putting into the hat as one of many little things that might help Council when they come to think out their gesture?) It goes without saying that this will affect only the junior most rungs in the services concerned, and nobody will contend that suitable Indian young men are not available in large numbers today to fill adequately all the vacancies that may occur at those stages in the various services. Indeed, after the war the number of young men, particularly those with high academic qualifications who have also served on the military side will be so large as to constitute a distinct problem for India itself. That problem may to slight extent be easier to deal with than if all vacancies in the services are henceforth to be filled by suitable

Indians.

India will for a long time to come still need the services of technical, scientific and industrial experts, and there is no reason why a large number of these should not be British even in a completely autonomous or even independent India. These will no doubt be recruited under the new conditions on a contract basis, and I submit that even during the interval they should be recruited only on that basis so that if any question of the termination of the services of any of these experts should arise, the termination can take place under the terms of their contracts and no difficulty need arise. (The Viceroy has noted " This assumption that the British will be found ready to put up with such conditions is touching")

There is one direction in which progress with regard to Indianisation can be made fairly rapidly even under existing circumstances without any loss of efficiency and without occasioning any dislocation. I have in mind the highest Judicial appointment in the Provinces, that is to say, appointment to the High Court, Chief Courts and Judicial Commissioners' courts. Eleven years ago, the Services Sub Committee of the Round Table Conference made an unanimous recommendation that no further recruitment into the Indian Civil Service should be made for the purpose of supplying Judicial Officers. Unfortunately no notice was taken of those recommendations to which the Committee attached considerable importance. Today, the appointment of Indian Civil Service Officers as District and Sessions Judges and High Court Judges has, except in a very few exceptional cases, come to be an anomaly. It has been fairly admitted that in the earlier history of the High Courts of India, judges drawn from the Indian Civil Service achieved meritorious distinction in the discharge of their duties. Even today there are



notable exceptions, but they have come to be only exceptions. The general run of Indian Civil Service Judicial officers no longer inspires the same confidence that they used to in the past, and they certainly do not compare as favorably as with their Indian colleagues as they used to. That is a field in which the Indian has proved his superiority to his average British colleague, and there is no reason why the natural consequences should not follow. There is quite a large British element in the various High Courts, &c. today, and if not added to any further it should last for quite a number of years and the change in that sphere need not occasion any violent break with the past. Nobody denies that Great Britain itself could supply direct the highest forensic and judicial talent for employment in India which would do more than hold its own against the Indian talent available. Unfortunately, however, though such talent undoubtedly exists in abundance in Great Britain recent appointments to the High Courts in India from Great Britain indicate that these appointments offer no attraction to people who actually do possess such talent, and that it is only mediocre people who can be persuaded to come to India to take up these appointments. Some of these appointments have indeed been extremely disappointing. The only conclusion to be drawn from this state of affairs is that this field must now definitely be surrendered to Indians who have in every respect established their claim to it.

Same and similar considerations though not with the same force, apply to appointments to the posts of District and Sessions Judges. Indian members of the Bar and senior officers of Provincial Judicial Services have proved themselves at least as competent in these appointments as members of the Indian Civil Service, and there is no reason why appointments to these posts

should not be confined to practicing members of the Bar and senior members of the Provincial Judicial Services selected on the basis of efficiency.

If these suggestions with regard to judicial appointments are given effect they would make an appreciably larger number of Indian Civil Service officers available for service on general administration side which would in itself be a great advantage having regard to the conditions with which India is bound to be faced on the termination of hostilities. Arrangements for India's defense under the new conditions will give rise to problems of great magnitude and complexity. I am not at all competent to offer any views on this group of questions, but I am extremely anxious that advantage should be taken of the conditions to which the present war has given rise to provide training and experience for Indian officers on as large a scale as possible in various activities which are carried on more or less only during a period of war; and also that distinctions and anomalies which obtain in the present system on the basis of racial discrimination should be eliminated altogether. I am sure this is a matter which would require expert handling, but given the will and determination necessary a great deal can be achieved which would prove of immense advantage to India in making its own arrangements for defense later on.

One or two suggestions that I have to offer in this connection are offered with even greater diffidence than those that I have ventured to submit in connection with civil administration as I have very little experience of conditions obtaining on the defense side.

One has not been able to help noticing that Indian officers are very inadequately represented on the staff side. Now that commissions are being given to Indians on such a large scale it

ought to be possible to train much larger numbers of them to hold staff appointments. I would suggest that as preliminary step at least half the vacancies in the Staff College at Quetta should be reserved for Indian officers. (The Viceroy noted: I think we might give him the no on this)

Again, the very few Indians who have been given staff appointments have been almost wholly employed on the Quartermaster side. There have been extremely few appointments and those relating to purely routine jobs on the Adjutant and General sides.

There are very few Indian Staff Officers at headquarters particularly at Delhi as against an enormous number of comparatively junior and inexperienced British officers. Surely advantage should be taken of war conditions to train a large number of Indians in these jobs? I believe similar conditions prevailed overseas. This is a matter to which His Excellency the Commander in Chief's personal attention might be drawn. (The Viceroy noted: Important to keep Sir Z.K. tight on all this.)

Where Indian commissioned officers have to serve in mixed formations as junior staff officers, e.g. Staff Captains, Liaison Officers, Brigade Supply Officers, &c., they have no power of command over European troops. Surely no officer could be expected to maintain discipline under those conditions and, apart from the stigma of racial discrimination, the awkwardness resulting from this discrimination is bound to result in an inefficient discharge of duties for which the Indian officer could not fairly be held responsible. The whole arrangement is unfair, and it is submitted that whenever Indian officers are called upon to serve in mixed units or formations they must be given equal powers of command over all ranks.

After the war a very large number of Indian officers with adequate training will be available for service on the military as well as on the civil side. The arguments that used to be employed to demonstrate the impracticability of Indianisation on the military side on a very large scale will have ceased to possess any validity. It should be possible after the war to man all Indian units with Indian officers up to the seniority which Indian officers may by then have attained in adequate numbers. It would be extremely unfair to recruit British officers to replace trained Indian officers who must be demobilized and cast adrift. I believe it would have an extremely good effect if an announcement could be made that on the termination of hostilities the Indian units of the Army will be so reorganized as to be officered completely by Indians up to the seniority in which Indian officers are then available. (5)

Acknowledging this letter The Viceroy, The Marquess of Linlithgow, wrote a personal letter to Sir Zafrulla:

The Viceroy's House, New Delhi, 27 August 1942.

My dear Sir Zafrulla Khan,

Very many thanks for your personal and confidential letter of the 4th August, and for the interesting note enclosed in it. It is always a help to me to know your mind, and your personal letter has been very stimulating in many ways.

As you say in the second paragraph of your letter, we have not had quite the response to the latest expansion that we might have expected. But I will confess to being a little hardened to



disappointment in these regards! Not only is the present Council a very able and representative body but ( to say nothing of the position of the major communities) for the first time it gives representation to the Depressed Classes and to the Sikhs, and that by itself, leaving all other features of expansion outside, is a very significant landmark. Equally, as you rightly point out, there is the selection of Sir R. Mudaliar to be one of our representatives at the War Cabinet. I am sorry that we should have lost Sir C.P. Ramaswami Aiyar; but his feeling as he expressed it to me was very strong on this matter of the threat which Congress represented to the Indian States; and it was perfectly clear that he could not be able to carry on, from within the Executive Council, there was nothing for it but to let him go. But I greatly regret his departure, for his experience, standing, and personality would all have been very valuable assets to us.

I appreciate your point about Muslim proportions, and it is one which I keep in my mind; and I am interested in the specific point which you raise in that connection.

4. I have been paying a great deal of attention to one point in particular taken in the memorandum you have been kind enough to let me have with your letter, and that is the position of Indian officers on the defense side. I think that it will help you if I let you see the note which I enclose with this letter and which I recently got General Hartley to prepare for me.

Yours sincerely,  
LINLITHGOW.

(Enclosed in this letter was a letter of 14 August from General Hartley to Lord Linlithgow, but the enclosure has not been published). (6)

Sir Zafrulla after having completed his tenure as the first Agent General in Chungking returned to India and resumed his duties as the Puisne Judge of the Federal Court of India. As expected by the Viceroy he established the diplomatic relations with China on sound footing, so that when he left China, Generalissimo Chiang Kaishek wrote to the Viceroy:

"The last but one paragraph of the letter dated 26 September 1942 . "We are sorry to part with Sir Zafrulla Khan on both public and private grounds. During his comparatively short stay here he has been instrumental in drawing closer both political and cultural ties between India and China." (7)

The Marquess of Linlithgow was anxious to hear from Sir Zafrulla his impressions about China and the Chinese. He informed Mr. Amery, the Secretary of State for India in his personal and private letter dated 3, October 1942: number 4 of the said letter: " Zafrulla should be back here in a few days from China, and I shall be interested to hear his impressions, though from what I gather he has found the Chinese somewhat irritating! That is not altogether surprising. It is an experience which we have had ourselves from time to time".(8)

Sir Zafrulla has been sending weekly reports to the Political Secretary, Sir Olaf Caroe. On his return to Delhi , in early October, called on the Viceroy and communicated his impressions to him, and summed up with :

Once Japan is defeated, the Communists will take over China.

Why do you say that?

The Communists are the only well-organized disciplined party in China. They are the only ones who are carrying on any

fighting against the Japanese. The Kuomintang is not an organized party. It is a rabble. It is riddled with corruption. Once Japanese are out of the way there will be no resistance to the Communists.

It is a mistake to imagine that the communist party of China is not deep red variety; that it is only pink. Its leadership has been trained in Moscow and is deep-dyed red.

3. The Chinese peasant is hard working. He manages to coax the rich soil to produce three crops a year. But he is exploited and oppressed by petty officials. It is just wishful thinking to imagine that he would not submit to communist control. He does not possess enough spirit to resist anything. All that he is interested in is to be left undisturbed to pursue his laborious calling. He will submit to anyone who promises him security, and he will be happy with anyone who can procure him some relief from oppression under which he suffers.

He was not told what the Viceroy thought of his impressions. But whatever he thought, it was little that he could do or attempt about situation". (9)

In Urdu version of his autobiography, Tehdis-e-Nemat, Sir Zafrulla has commented that the Viceroy listened to his impressions attentively and with interest but probably did not attach any pertinent significance to them.

Sir Zafrulla had hardly spent a few days in India when he was selected to attend IPR Conference in Canada as leader of the Indian Delegation. The Viceroy wrote to Mr. Amery on 7 October 1942. Number 3 of letter : " We are, moreover, just about to send the Jam Saheb, Zafrulla, Mudaliar, and the rest of the IPR team. It is an ill business trying to persuade deaf adders, but I would expect Indians of their prominence to carry real

weight." (10)

The footnote of the manuscript number 76 says that " The Jam Saheb ( of Nawannagar ) was expected to leave the U.K. at the end of October on a visit to Canada and the U.S.A.; in the event the visit was postponed , and finally prevented owing to the death of his father, which necessitated his return to India. Sir Zafrulla Khan and Sir Ramaswami Mudaliar were the senior members of the Indian delegation to the Conference of the Institute of Pacific Relations which was to have been held in December in the U.S.A., but the venue was in fact changed to Mont Tremblant, Quebec. According to Sir Zafrulla's account the third member of the delegation was Begum Shahnawaz. During the war the journey would be long, circuitous, uncomfortable and hazardous.... the journey was perforce to be by Air. Beyond Cairo the whole route was under military control. There was a wait of three days at Cairo. Mr. ( later Lord ) Casey, an outstanding Australian public man was then British Minister in the Middle East and was posted in Cairo.....He was very keenly interested in the prosecution of the war and to create confidence in Indian minds that after the war Britain would take concrete steps to satisfy Indian political aspirations. He outlined the proposal he had submitted in his memorandum to the Viceroy. The Minister thought it was an excellent idea. He said "Why should you not travel by way of London on your return journey and discuss your scheme with the Secretary of State".... I should think Amery would welcome it. But I shall take it up with him. "(11)

Sir Zafrulla was still away from India when Mr. Spens was appointed the Chief Justice of India to replace Sir Maurice Gwyer. The incumbent Chief Justice was rightly annoyed over this decision of His Majesty's Government taken without even



consulting him or even the Viceroy. The Chief Justice wrote a very strong worded letter to The Marquess of Linlithgow, who by virtue of his own prejudice against Indians, was in favor of the choice of an Englishman as the Chief Justice. The Chief Justice wrote : " It appears, however, that the Federal Court is still to be regarded as a subordinate Court and indeed as an appendage of the English Judiciary, to which, as with the latter, judges are appointed on the recommendations of the Lord Chancellor without reference to India. I took occasion when the Lord Chancellor was anxious that Zafrulla Khan should be appointed to the Judicial Committee instead of to the Federal Court, on the ground of the greater distinction and importance of the former, respectfully to point out that he ( the Lord Chancellor) failed to appreciate how profoundly the situation had been altered by the establishment of the Federal Court, to be a judge of which must necessarily in future become the ambition of every Indian lawyer in preference even to a Tribunal so august as the Judicial Committee; but, it never occurred to me that, so far as the appointment of Judges were concerned, the only difference would be that the new Tribunal sat in Delhi and not in London". (12)

The Marquess of Linlithgow, The Viceroy, expressed his satisfaction over the choice of Mr. Spens and wrote to Mr. Amery on 9 November 1942: Number 9 of the letter reads: " I am glad you have at least been able to find a successor for Gwyer. But I fear that your choice has caused Gwyer little enthusiasm I Indeed I have had from him a long and somewhat highly spiced criticism of the choice, the procedure and everything else. He does not think Spens quite up to the level, and thinks the appointment will be regarded as a political job: he is not certain that Vardachari might have been a better Chief

Justice, and would have favored an Indian selection: he does not feel that any commitment ought to have been entered into without reference here, &C. On that I am not sure that he is technically right ( I am looking up the rules) and if he is, I shall have to try to soothe him and see how any departure from the rules can be covered. Gwyer I think has somewhat false idea both of the importance and the attractiveness in present conditions of the Federal Court. It is quite clear from what you have been kind enough to tell me that there is no prospect, things being as they are, of our getting a man of the highest quality, and that we must be content with somebody who is little below the highest. As for the appointment of an Indian Chief Justice at this stage, I am perfectly certain that we could not appoint Zafrulla. He has had less than a year on the Bench, and I do not suppose the Federal Court has had two dozen cases (possibly not half the number) before it in that time. Vardachari is an excellent Judge for whom both on record and on what I hear of him I have the highest respect . But my own feeling is that whatever Gwyer may think or say (and of course his views would always be entitled to, and receive, great weight) we ought to have another man with experience of the Bar at home." (13)

The Marquess of Linlithgow, The Viceroy, in reply to Mr. Amery's telegram that Sir Zafrulla may be allowed to travel back to India via London, wrote on 21 November 1942: " Your private and personal telegram of 15th November No. 1332. Zafrulla. He will be very valuable on the Chinese and I see no objection to his breaking return journey in London, but should warn you before you make up your mind that so far as Indian political situation is concerned he may well produce something embarrassing, for in the constitutional field he is entirely ruthless, and oblivious of all practical considerations in his self appointed mission to be first

past the post of self-government! I dare say we shall see some signs of that while he is in the United States, and you will remember that at an earlier stage while still on my Council he put up political proposals which went a good deal further than we could support. As in other cases he assumes that there is going to be a complete landslide, and wants the credit for having provoked it. I do not myself believe there is going to be a landslide and for that reason I am inclined to be a little shy of giving its evangelists a pulpit. But I have no doubt that with that warning you will be able to keep him reasonably in hand. You will not overlook that a combination of Zafrulla and Mudaliar in favor of a marked degree of early constitutional advance, Indianisation, etc., which they can advocate all the more readily as they have no responsibility, might well present both you and me with difficulties of the type with which we are familiar. If in the light of the above you would like me to do so I will of course readily suggest to him that he should return via London." (14)

The footnote: The telegram said: that Casey, who had seen Zafrulla in Cairo, had suggested to Eden that Zafrulla, after fulfilling engagements in Canada and U.S., should visit London to give first hand impression of Chungking. (15)

The Viceroy also realized the value of Sir Zafrulla's impressions of China and wrote to Sir Ramaswami Mudaliar on 25 November 1942. Last paragraph, number 13 of a long letter reads: "Let me again send my warmest good wishes for your American tour; and I hope that you will give a message from me to Zafrulla when you see him. I had a very useful talk with him on his way through Delhi from Chungking, and found his impressions of China and the attitude of China towards India, both now and in the future, of great value." (16)

On way to Canada, Sir Zafrulla also had a brief stop in

Accra, Ghana. There he met Mr. (later Viscount) Swinton, who was the Resident Minister in Accra. Sir Zafrulla talked with him frankly about India and China. Mr. (later first Viscount) Swinton was suitably impressed by his impressions of China and his sentiments about Indianisation. In a letter he sent the report to Mr. Eden and Mr. Amery. Mr. Amery wrote a letter to The Viceroy on 27 November 1942 and enclosed a copy of Mr. (later first Viscount) Swinton's letter: Number 9 of the letter " I enclose a copy of Swinton's letter about his talks with Zafrulla. What Zafrulla says about the Chinese fits in very much, I fear, with other intelligence which you have sent us about the intrigues of Chinese representatives with Congress. I have no doubt we shall have to be very much on our guard against Chiang Kai-shek and their entourage both during and still more after the war. I am sure it would be a good thing to have some talk with Zafrulla here on his way back from America. But I shall keep in mind your warning about him." The following was the enclosure:

Resident Minister's Office, Accra, 12 November 1942.

My dear Leo ( Amery),

Sir Mohammad Zafrulla Khan and Begum Shah Nawaz came to see me on their way through to America. Zafrulla said there were certain matters he wanted to talk to me about alone. He hoped to come back through England and see you and Anthony, but would like to take the only opportunity available to him of giving certain impressions and opinions to a member of the Government.

He had only a few days in India on his way from China to



the United States. He had had one talk with the Viceroy, and I gather had expressed his views to the Viceroy, so that you probably have them already. However, in case there is anything new, I should like to report to you the gist of his conversation. Incidentally he spoke in warm terms of both Anthony and yourself, and was obviously anxious to have talks with you.

#### CHINA

Zafrulla said that his stay in China, coupled with all his experience of Chinese activities in India, left him in no doubt as to Chinese aspirations and intentions. Chiang Kai-shek was thinking very big. His aim was that, after the war, China would occupy the position Japan had mapped out for herself in Asia. The Marshal aimed, not only at acquiring all territory that had ever been Chinese, but of assuming a predominant position in Asia. He took it as a matter of course that Indo-China would revert to China, but he went a great deal further. Burma would be brought within the Chinese orbit as a tributary state, and his ambitions extended to parts of India also.

The picture in his mind was a Peace Conference immediately after the war, in which China would make her demands and would be supported, as he hopes, by the United States. One reason why the Marshal wanted a Congress Government was that it would be weak and amenable to his pressure.

Zafrulla said that the Chinese representative in Delhi received definite orders from Chiang Kai-shek to present everything through Congress glasses. He was discouraged from reporting home any news or facts which did not fall in with Congress views, and, if he did so, his reports were disregarded.

Zafrulla said that the American Ambassador in China had a

good knowledge of China and the Chinese and was a realist and quite proper in his actions, but he was rather shy and retiring. I have no means of checking the value of this appreciation. Zafrulla said, however, that the American Press correspondents in China were very different. They encouraged and played up the Marshal, and took the line that in doing so they were advancing American interests.

Zafrulla said that Chinese aims were completely misunderstood by the great majority of the Press and people of India, who regarded China as a disinterested friend. Zafrulla had suggested to the Viceroy that, when he got back, he should form Indo-Chinese Cultural Association. This Association would be purely an unofficial body. It would entertain Chinese who came to India and would indeed invite Chinese to come and lecture. The Association would, however, comprise a number of Indians who would, while treating the Chinese with courtesy and friendliness, as he put it, debunk their extreme views by asking intelligent questions, engaging in correspondence in the Press and similar activities.

I do not know whether the Viceroy has said anything to you about this. Zafrulla spoke on China with obvious sincerity and conviction and he said he was speaking as an Indian loyal to the British connections, but he wanted an India for the Indians and not for the Chinese.

#### INDIA

Zafrulla went on to say that he wanted to say something about his own friends, who were cooperating wholeheartedly in the war effort. They were becoming discouraged. Some of them had been to see him during his short time in India, and asked his advice. They had the feeling that we made concessions to our

opponents, but not to our friends. I naturally said that he, with his long record of public service, knew that we did keep our word and that our attitude throughout towards the Muslims did not give color to any such view. Zafrulla said, however, that without making any constitutional change, we could do a great deal to encourage our friends. He gave two examples.

He said that we could carry further the Indianisation in the officials of the Public Services. He would not ask that anyone should be appointed who was not competent to do his job. But there were a number of Indians of the right kind, friendly to us, and quite competent to fill administrative posts. In fact, appointments had been made; but in form the old fifty fifty arrangement stood, and he pleaded for an advance. He said that to get more good, competent and reliable Indians into administration now would not only be an encouragement to our friends, but would make the machine better and more reliable whenever constitutional change came.

His other example was in the Army. Many Indians have done well as officers. But here again they felt that in form they were working under the old dispensation, and that, when the war was over, they might be replaced by junior British officers. It would have a heartening effect if a statement could be made that Indians, who had proved their loyalty and capacity in the Army would retain their positions so far as the size of a post-war army permitted, and would not be replaced by British officers.

I naturally did not express any views of my own, nor did I know how far Zafrulla was presenting a true picture, but I did of course know his record, and I remember that years ago, when I was Colonial Secretary, he had talked to me very reasonably and helpfully about Palestine. I certainly feel no doubt of his sincerity with which he spoke, and I am sending you at once a

report of his conversation. I enclose another copy of this letter, as you will want to send a copy to Anthony.

Yours ever,  
Swinton. (17)

This is astonishing that Sir Zafrulla has neither mentioned his meeting with Mr. Swinton in his Urdu autobiography Tehdis-e-Nemat nor in the English version Servant of God. This fact came to the light for the first time with the publication of the documents of Transfer of Power.

The appointment of a new British Chief Justice of the Federal Court of India had caused a great deal of indignation to the incumbent Chief Justice Sir Maurice Gwyer. Therefore, on the Viceroy's recommendation Mr. Amery instructed Lord Halifax to communicate the appointment to Zafrulla in advance, and I am sending you with this letter a copy of a telegram from him regarding the result. Zafrulla seems to have taken it all in good part and not to feel any of the doubts which Gwyer has expressed:

Enclosure: From Washington to Foreign Office  
dated 1st December 1942.

Your telegram No. 7435. Following received from H.M. Consul General, Chicago, telegram No. 26, November 29th:-

Begins: I made oral communication to Zafrulla tonight (he dined with me last night and our relations are good).

He said it was courteous of the Secretary of State and Viceroy to advise him in advance. He had never heard before



Spens was interested in his career. As far as he personally was concerned this appointment made no difference. Had his opinion been asked he would have recommended senior Judge. He himself might be a candidate at some future date but he could afford to wait. There would be some criticism of appointment of a European but not very much.

Last night in private conversation he had observed that conditions in India could be improved if the 3 portfolios at present held by British were held by Indians so I was surprised at his lack of opposition to this appointment.

4. I am assuming you will inform MacDonald in Canada. Ends" (18)

Although the Viceroy has expressed his opinion about Justice Gwyer's reaction, he wrote another letter on 8 December to Mr. Amery: number 8 of the letter reads " many thanks for your help about publicity for Spens. As it happens the appointment has attracted practically no comment, either critical or otherwise, and that is no doubt all to be good. I gather that there is in certain quarters a feeling of mild relief that the choice should not have fallen on Zafrulla, who is thought to be moving into the political field to a greater extent than is altogether desirable for a Judge, by his visit to Chungking, and his visit to America and the speeches he is reported to have made there; and that the advantages of continuing for the present to fill the Chief Justiceship by a European from home, wholly detached from India's communal and other problems, are much more widely accepted than one would have imagined from vigor with which Gwyer pressed for a local appointment." (19)

Sir Zafrulla had been a vigorous campaigner for Indianisation. Sir Mudaliar also was urging the British

Government for the same. Mr. Amery, in his letter wrote to the Viceroy about ' Mudaliar and his attitude on the general Indianisation issue'. The Viceroy replied in his letter dated 22 December 1942: number 3 of the letter " many thanks for what you say in Paragraph 4 of you letter about Mudaliar and his attitude on the general Indianisation issue. You may be pretty certain that it is likely to be strongly supported by Zafrulla, who is also likely to push for further Indianisation of the services, the High Courts, & C: I am bound to say that I am extremely sceptical as to the wisdom ( unless, that is, a clean cut is to be made) of forcing service Indianisation in present conditions". (20)

The Viceroy continued in Para 7 of his letter: " Many thanks for what you say in paragraph 9 of your letter about Zafrulla. I am quite familiar with certain of these arguments which Zafrulla has used to Swinton so far as India is concerned: and I have touched on them, in so far as they deal with the Indianisation of the Services above. The fact is that here as

elsewhere people are extremely anxious as to the position of their community, their friends or part of India, etc. in the event of our clearing out: and that is what lies at the bottom of a good deal of this type of suggestion. But I am sure that you will be at pains to see that Zafrulla is not allowed to run away during his London visit." (21)

Sir Azizul Hag, the Indian High Commissioner in Great Britain, was being considered for appointment on the Viceroy's Executive Council. Mr. Amery wrote to the Viceroy on 29 December 1942 and paragraph 8 of his letter reads: "Meanwhile, to return to Azizul Hague, I believe you will get better value out of him in India now that he has had his mind, naturally receptive, broadened by a year's contact with this country and its problems.

That would at any rate give you another Muslim. For the further one, if you have to spare Firoz Khan to the Punjab, you may possibly be obliged to bring back Zafrulla?. I notice in your letter of the 8th, just received, that there is an impression that his heart is still more in politics than in law." (22) (The Viceroy added this quip: Thank goodness for small mercies!)

According to Sir Zafrulla's Urdu autobiography 'Tehdis-e-Nemat' and his book "The Agony of Pakistan", he had submitted a memorandum to the Viceroy in which he had forcefully urged that "the time had come when the entire Council should be composed of Indians and should function as a Cabinet, under a gentleman's agreement that the Secretary of State would not veto a decision of the Council except in a case which was likely to prejudice the security of India. The Viceroy forwarded the Memorandum to the Secretary of State and the author of the memorandum was summoned to London for consultations. He arrived there in the first week of January 1943 and stayed on till the first week of March."

"Consultation over the proposals contained in the Memorandum was carried on with Sir John Anderson (Governor of Bengal 1932-37, Lord Privy Seal in 1943 and later Lord Waverly), Sir James Grigg (Finance member of the Viceroy's Council, 1934-39, Secretary of State for War in 1943 and Sir Findlater Stewart (Permanent Under Secretary of State for India, 1930-39, on special duty in connection with the war at No 10 White House St. James Square, in 1943). Each of these gentlemen was eminent in his particular field, had intimate knowledge of conditions in India, was marked on account of the sanity of his views and sobriety of his judgment. Sir James Grigg reported to the Prime Minister, He had been his Private Secretary when Mr. Churchill had been Chancellor of Exchequer and possessed his

confidence. Sir Findlater Stewart briefed the Secretary of State of India (Mr. L.S. Amery) and Sir John Anderson undertook to support the Secretary of State when the matter came before the Cabinet."

"This was perhaps the most anxious and demanding period of the war and progress in the consultation was slow, but at last agreement was reached and so far as London was concerned, all 'I's were dotted and all the 't's were crossed, even to the extent that Sir A. Ramaswami Mudaliar, the senior most Member of the Viceroy's Cabinet would in effect have the status and authority of a Prime Minister and Head of the Government, though not the style and title thereof. All that remained and was awaited was the Viceroy's final assent. As luck would have it Mr. Gandhi chose just that moment to announce one of his recurrent fasts unto death whereupon three Indian Members of the Viceroy's Council, Sir Homi Mody (Bombay) Mr. M.S. Aney (Central Provinces) and Mr. Sarkar (Bengal) resigned from the Council as a gesture of support for Mr. Gandhi's stand. The Viceroy interpreted this as lack of a sense of responsibility on the part of the men to whom the power was proposed to be committed under the scheme agreed upon in London, and advised that to embark upon it in the middle of the war would involve too grave a risk." (23)

Sir Zafrulla returned to India to his judicial duties in the Supreme Court at Delhi. This is the visit which forms the basis of the future letter of Mr. Amery, but surprisingly enough no mention of Sir Zafrulla's particular memorandum or the purpose of his visit has been mentioned in the documents of Transfer of Power.

Next letter is from Mr. Amery to the Marquess of Linlithgow, dated 11 January 1943. number 2 of the letter" I have had several good talks with Zafrulla, who is most



interesting on the subject both of American views on India and on Chinese conceit and imperialism. He thinks that the Chinese quite seriously, in their present swollen headed mood, think of reacquiring suzerainty not merely over Tibet, but over Nepal, Bhutan and Upper Burma! On the other hand, he is also very doubtful whether China will not relapse into civil war between the Communists and Kuomintang very soon after this war was over. On the subject of the Indian political situation he told me that it would have been quite impossible for Mudaliar not to have put forward some positive policy such as that of Indianisation and of opening up an enquiry into the future constitution. Certainly his move seems to have thrown confusion into the ranks of those who had never thought of any solution except on Congress lines, and to that extent it may have been all to the good. I don't know whether the conference eventually passed anything in the nature of a resolution on the subject-- the Jam Saheb has just told me that he believes something of the sort did take place."

Para 5 of the same letter : " To return to Zafrulla. He and Spens met at Lunch at our house today and clicked very happily, both personally and in their conviction that the Lord Chancellor is wrong in trying to prevent the extension of the functions of the Federal Court at the present moment. They are coming to have a full-dress talk with me on the subject one day next week". (24)

The Viceroy was rather annoyed with Sir Zafrulla and Mudaliar for their speeches in America. Moreover Sir Zafrulla's meetings with Mr. Amery and other officials of His Majesty's Government added fuel to the fire. His Report of 13 January 1943, sent to the Secretary of State for India, provide ample proof of his annoyance: paragraph 22 of the lengthy report: " All this is for your eyes only, and I would prefer that nothing should

be said to Azizul Hague. I hope to be able to let you have a recommendation sufficiently early to fit in with his anxiety, which you mention in paragraph 8 of your letter, to go on leave some time in February. I am very glad indeed to have your judgement of the improving effect upon him of the time he has been at home. Let me only add while we are on this point that Zafrulla can't have it both ways: though he is as anxious, as most Indians, to do so! He must make up his mind whether he wants to sit on the Bench or to be a politician. He was an intolerable nuisance about the Bench until he got firmly settled in there. But now it looks as though he would like to have the status, emoluments and pension of a Federal Court Judge, while being free to wander abroad promoting political understanding of India's point of view. I think he had better stick to the Law once his present journeyings are over."(25)

Incidentally Mr. Amery wrote a long and detailed letter to the Viceroy on 15 January 1943 commending Sir Zafrulla's views on China, more Indianisation etc. etc. Paragraph 2 : " We had a Government lunch to Zafrulla on Wednesday, to which most of the War Cabinet and other Ministers came, how far induced by eagerness to see and hear Zafrulla ( whom most of them already knew) or by the prospects of solid food and even wine, I cannot say. Anyhow they were rewarded by an admirable little impromptu speech of Zafrulla's in which he touched lightly on the Indian situation, affirming his conviction that it was vital for India to stay in the British Commonwealth and that the danger of her going out would only arise if we appeared to be coercing her to stay in or to be going back on our promises. On China, was more restrained than in his private talk to me, but quite sufficiently illuminating, and equally so in his comments on the United States' attitude over India. The whole thing was a

great success and Bracken at once collared him for a broadcast. A further suggestion that he should meet the Press was regarded to head off as unsuitable for one in his judicial position.

In a talk with me yesterday he urged in general terms the importance of progressive 4. Indianisation, not only in the Executive, but in the services, Judiciary etc, etc. so as to have trained and moderate men available for Indian purposes and forestall the places of Europeans being filled with ignorant and head swelled political retainers. He did not raise the question of the Supreme Court, but said that in the High Courts some of the recent appointments from home had been weak and that while he was entirely in favor of really able men like Harries, there was much to be said for only bringing out the best Europeans and otherwise extending the scope for Indians. With regard to the fighting services similarly stressed the importance of utilizing to the full young Indian officers who had done well in the war and not bringing out fresh British juniors to replace them; also the importance of bringing more Indians in on the actual staff side. On the diplomatic side he urged the case for Bajpai being made a full Minister, the argument for which I need not repeat. So far as his own position at Chungking was concerned, he was quite content; for there the Chinese had treated him with every consideration and as senior to Ministers appointed after his arrival.

As regards himself, he is very anxious to be allowed to do useful public work of one sort or another during the five months of the law vacation. The only thing he has suggested in that connection was that he might revisit the States and do what he found more effective than anything else, namely, meet quietly small groups of the academic and professional classes, whose opinions count for most in America. It has occurred to me,

though he certainly did not hint at it, that there might be something to be said of Mudaliar renewing his contact with India and the Council, say from the beginning of June onwards, and having Zafrulla here as, so to speak, India's summer representative in the War Cabinet. He would certainly get on very well and I imagine there would be no insuperable difficulty in making him representative, even though not actually a member of the Council. The Australian representative, after all, is not actually a member of the Australian Cabinet, and in fact Earle Page was actually a member of the Opposition. My impression is, though I have not attempted to verify it, that Rufus Isaacs went on his first important financial and diplomatic mission to the United States in the last war while still Chief Justice. On the other hand, I am sure that Zafrulla would do admirably useful work in the States on the lines suggested at the beginning of this paragraph and of course his status as a member of the Supreme Federal Court is a thing that deeply impresses Americans. (The Viceroy snapped: P.S.V. Speak. I find this hard to accept. He is a Judge. I hardly think L.C.J. of England a parallel. L )

In that connection Spens and Zafrulla are coming to see me one day next week about the enlargement of the functions of the Court. Spens is, I think, at first blush, very much in favor of that, but I have sent him the whole of the papers to study carefully. My own inclination, I must say, is definitely in that direction. I see no reason why a greater measure of independent status in the legal sphere should not precede political independence. Nor do I attach the kind of superstitious reverence for the Privy Council as a Bond of Empire which is held by a certain number of lawyers and above all by the Judicial Committee itself. My own feeling is that while it has served a very useful function in the



development of a more or less unified legal system, that is a comparatively small matter if, on political grounds, or on grounds of practical convenience, any important part of the Empire wishes to settle its own legal disputes at home. I dare say the simplest optional recourse to either final court and see how far Indian litigants prefer one court to another." (26)

Still further Mr. Amery sent another report of his meetings with Sir Zafrulla and the matters discussed therein. This is dated January 20, 1943. "Zafrulla spent the week-end with us and we had some quite good talks. He is very definitely convinced that India must not only remain united for broad purposes of external relations, but that even so she cannot possibly hold her own in the world, for a long time yet to come without the co-operation of this country and of the British Commonwealth. His experience at Chungking and what he gathered there of China's nationalist ambitions, have no doubt strengthened that conviction. He told me that what he would like to do would be to create unobtrusively behind the scenes something in the nature of the nucleus of a party of moderates who could throw their weight into the scale effectively when the moment comes for the establishment of an Indian Constitution and when India has to decide whether to stay in the Commonwealth or not.

1. I suggested to him that the bringing together of people on so broad an issue and one, in a sense, so negative as that of not breaking with the Commonwealth, might not be enough unless it were coupled with a more definite constructive program with regard to the Constitution itself and pointed out to him that what none of the political parties had yet attempted to do was even to begin thinking about the structure of an Indian Constitution that could meet the needs of the complex Indian situation. All they did was each to clamour for power on the assumption that the

British Parliamentary Executive system is the only possible one. He agreed and said that he himself had never thought that that system could apply at Centre and that what was needed was a system in which the Central Executive was more independent of the Legislature, and also more directly dependent on the Provinces and States, in a somewhat looser confederation than that of the 1935 Act. But clearly his constructive thinking had not got beyond that and when in conversation I threw out ideas as to various ways in which this might conceivably be achieved, he was keenly interested and anxious that I should put them down for his benefit. I declined to do this on the ground that I had deliberately refrained from constitution-making myself, knowing that anything I produced, or that was attributed to me, would promptly be prejudiced in Indian eyes and that the solution must come from Indians themselves.

I pointed out in that connection that whenever it did come to the business of agreeing on a Constitution, the whip-hand lay entirely with those who had really given serious thought to the wide study of Constitutions elsewhere, but upon a mastery of every statistical and economic fact bearing upon India's own problem, and cited the case of Curtis and Lothian and the little handful who worked with them in South Africa between 1906 and 1909 and not only brought about South African union but gave it its particular shape, simply because the politicians readily accepted their conclusions, not having worked out any for themselves. An unobtrusive group of moderates who were able by virtue of their sheer constructive work to impose on the rest of India their conclusions as the type of Constitution would be in an infinitely stronger position also to get their way with regard to the future relationship of India to the Commonwealth.

He said that in his view it was very doubtful whether in fact

Indians would ever agree upon a Constitution unaided. His idea was that at the end of hostilities, we should give them a year in which to devise their own Constitution and, if they failed, impose a provisional constitution of our own, which would contain within itself provision for its own amendment or recasting. I pointed out that if such a constitution was to receive any measure of acceptance in India or indeed by the House of Commons here, that would be far easier if it was based on something that a body of thoughtful Indians, not identified with extreme parties, have themselves worked out, in other words if it were an Indian constitution, though not necessarily one agreed upon by Indian parties.

5. I dare say I may have a further talk with him on this theme. But at first blush it does look to me as if he might be more usefully occupied in the task of stimulating constructive thought and bringing together a group of men to really work out the problem than in doing anything else. The whole trouble in this matter has been the difficulty of starting anything from the Government end which would not be looked at with suspicion by India or which would not, as you pointed out in the case of your Executive, affect the work and harmony of Government itself. Naturally I have not enough knowledge of Zafrulla's character to know how far he would be likely really to see through a task of this character or what other fellow-workers he would be likely to enlist. But he certainly is a man of real intelligence and with a certain fervor of conviction towards constructive ends-- based in part I dare say in his deep religious beliefs-- which encourage me to think that he might be very real help.

21 January

8. To return to Zafrulla. I have just been presiding over a talk which he gave to the Empire Parliamentary Association.

What he said about India was simply to the effect that it would be a disaster for India and for ourselves if the partnership between us were not maintained in face of the new international conditions which would arise after the war; that there was no hope of any settlement between the parties during the war, but that we should be wise to go forward boldly, rather than wait for agitation in bringing into effective partnership those who were prepared to work with us, and so training a body of responsible men who could exercise a steadying influence afterwards. All this was said with great tact and discretion and made a good impression. The same applies also to what he said about China, a judicious blend of appreciation and apprehension. I shall no doubt have further talk with him about his general ideas. Meanwhile, if he is to do anything one of these days on the lines which I have referred to earlier in this letter, it is essential that nothing should be known of it prematurely and, above all, that there should be no idea that he was in any way working with us behind the scenes. I am sure, therefore, it will be best if you keep what I have told you about his ideas entirely to yourself and not discuss it with anyone, even with himself unless he actually approaches you on the subject. For one thing, he may not really be ready himself, when he looks further into the matter, to do anything positive just yet, or even at all. It may well be, for instance, that when he gets back to India he may find things not ripe enough, or that confidential talks with two or three friends may convince him that he is not going to get enough support to make it worth- while. If on the other hand he really is serious and going to get any support, it would be very much better that he should get some way ahead before either you or I should know anything about it, even sub rosa.

(The Viceroy has appended two remarks, noted against the



instruction to keep the matter secret and what about his Judicial work. at the end of the letter.)

Next is a letter from Mr. Amery to the Viceroy, the Marquess of Linlithgow, dated 29 January 1943, in which he has outlined his own views about the future Constitution of India and at the end has remarked: " From the talks I have had with them I imagine that this is the sort of conception of the future which would appeal not only to Mudaliar and Zafrulla individually, but to a great many able and competent men all over India." (27)

Paragraph 7 of the letter: " Zafrulla gathered from a talk he had at lunch with Simon the other day that the latter would be quite agreeable to appeals going to the Federal Court instead of to the Privy Council on an optional basis, and Spens and he and Kemp had a good talk over it with me the other day. I am all in favor of that as something which should help to keep the Federal Court from falling into contempt during the years that may intervene before any constitution comes about. I wrote to Simon to find out what he really thinks and am waiting for his answer". (28)

The Secretary of State for India was appreciating the efforts of Sir Zafrulla towards creating a better understanding of the situation in India but the Viceroy was vehemently opposed to any further Indianisation . Paragraph 3 of his telegram to Mr. Amery dated 6 February 1943: " Nor can we overlook the danger that Mudaliar and Zafrulla, &C., concerned as they are to eliminate the European element, may leave my successor with an exceedingly difficult hand to play, and with very little material of any quality to help him to play it. I should in any event be opposed to Indianisation of the Finance portfolio when

Raisman's present term ends, and propose to say so in making my formal recommendation to you about Home portfolio" (29) The Viceroy was exceedingly annoyed on Sir Zafrulla's activities in London. Hence paragraph 4 of his report dated 8 February 1943." Many thanks for your news of Zafrulla and his activities. He is in very bad odor with Gwyer at the moment! For, according to Gwyer, Zafrulla has never even written to him since he went abroad, and the delays in his return ( about which again he has said nothing to Gwyer) have caused extreme inconvenience in the Federal Court, and we may have to appoint an acting Judge to hear one or two outstanding cases. I think myself, despite Zafrulla's valuable qualities, that he has now had enough of foreign travel, and I should be opposed to any suggestion that he should visit America or visit England, or break away again for some considerable time to come from his judicial work. And, though he is very able, he is as anxious in the political field as other people to see us out of the way as early as can comfortably be arranged; and while that is very natural, it is not an ambition that I am necessarily too anxious to further ! And apart from that, I am conscious of a growing volume of criticism here of the impropriety of a Judge serving in these political posts such as Chungking, and delivering political speeches, such as he has done in America. Zafrulla has got to make up his mind one way or the other: either to go back into politics and leave the Bench, or to concentrate on his judicial work. I would not myself regard the parallel of Reading, which you mention, as exact. My own recollection agrees with yours-- That Reading went to America in 1918 when he was Lord Chief Justice, and returned subsequently to that office; but that was a specific mission of a very highly technical character, for which Reading's previous experience at the Bar and his financial acumen made him peculiarly well suited. I think it would be

overstating Zafrulla's position to suggest that he was so outstanding a figure or his work of such national value and significance." (30)

The Viceroy reiterated his opinion in his communication dated 16 February 1943: "many thanks for what you have been kind enough to tell me in your letter of 20th January as to your further talks with Zafrulla. He is a good man, but as I said in my last letter he must make up his mind whether he is going to stay on the Bench or do politics, and my own judgment would be that he had better stay on the Bench. I do not want to facilitate further wanderings abroad for him, and think he must return to his profession. He has intelligence and certain firm convictions towards constructive ends. But he is very much of a politician through it all". (31)

The Marquess of Linlithgow could not resist the expression of his anger on Sir Zafrulla's and Mudaliar's constant preaching for Indianisation. In his next communication of 21 February 1943 to Mr. Amery he wrote: "I would repeat that I think this is time to hit hard and make it clear to these people how much they have lost, and I would like to regain a good deal of the ground which the persuasion of people like Mudaliar and Zafrulla have resulted in our losing of late." (32)

On the other hand Mr. Amery was impressed by Sir Zafrulla's capabilities and acumen, and never hesitated in expression of his appreciation. paragraph 5 of his long letter: "Zafrulla has just been in to bid me good-bye. I have taken a great liking to him and been greatly impressed by his first-class intellectual ability and his sound outlook in the whole Empire problem. Interestingly enough, my boy Julian told me last night that he had been lunching with Sir George Moss, our late Consul-General in Chungking, who said that Zafrulla was the

best representative the British Empire had ever had with the Chinese, both from the point of view of the influence he exercised and from that of the direction of that influence. Now he is, as I wrote to you before, very keen on giving the whole of his spare time to working up the nucleus of a party of moderate men who wish to find a stable constitution for India and to secure India's future stability in the world by her remaining a member of the British Empire. I have talked to him a good deal about how a little handful of young men in South Africa, within a few years of the Boer War, and with all the bitterness between Boer and Briton then prevailing, set themselves to studying in a practical fashion the problem of South African union and by the sheer weight of the material produced and the problems thought out gradually convinced political leaders and in effect shaped the fate of South Africa. I have steadily stressed to him the point that a mere moderate party wishing to remain in the Commonwealth would, like the Indian Liberals, be purely ineffective because essentially negative. What he must do if he is to succeed is to work up a practical and growing interest in some definite solution of the internal Indian problem, and with it an equally practical interest in the problems of India's post war security which must inevitably lead to a recognition of India's interest in remaining within the British partnership, at any rate for a considerable period of years. He is fully seized of that conception and means to go ahead stimulating small groups of friends to study the problem in different centers. He thinks he can find from among his Indian friends enough funds to cover the necessary minimum of expenses for organization and possibly for the production of a small private magazine.

(The Viceroy's note is self evident: I cannot feel that it is consistent with the retention by the judicature of their



independence and hold on public confidence, that a Federal Court Judge should become active organizer in national and constitutional politics nor have I much faith in Z.'s discretion or knowledge of where to stop in a matter of that kind. L)

(Paragraph 6 was on two administrative matters raised by Sir Zafrulla Khan, and has been omitted by the Editors)

Paragraph 7 continues: " It is of course much too early to say whether Zafrulla's efforts will come to anything. But it is a great thing that a man of his ability and independent position should begin to get a move on. As you know, I have always been convinced that there is no solution of the Indian constitutional problem along the lines of the British parliamentary system and that some entirely different type of constitution at the Centre, with a greater independence of the Executive, has somehow to be devised. That can only come about as the result of study of other constitutions as well as of the Indian problem itself, by men who are not concerned with immediate party or communal advantage. The difficulty you have always seen about starting any such study under Government auspices is a very real one, and I am sure that the whole thing has infinitely more chance of success if it is entirely independent of Government and entirely Indian. So I hope earnestly that you will give Zafrulla every encouragement to persevere in his present good intention and make it clear to him that while he must work entirely on his own, you will be always glad to keep in touch with him and will give him such encouragement as can be given without in any way tarring him with the official brush. He is genuinely convinced of the necessity of India's remaining with the Empire and that is equally the case with Mudaliar and Azizul Haque." (33)

In spite of Mr. Amery's insistence, the Viceroy continued to assert his opposition to Mr. Amery's proposal. The Marquess of

Linlithgow's letter dated March 23, 1943. Paragraph 6 " I was much interested in what you say in paragraph 5 to 7 of your letter about your final talks with Zafrulla. The only complication I see about all this is that he has already been shot at out here for combining the Bench and politics, and I very much doubt ( though of course I must think it over further) to what extent it will be desirable that he should, if he is going to remain a Judge of the Federal Court, take up activities such as you describe, more particularly with official assistance. I feel myself that the difficulties are likely to be overwhelming." (34)

But the Secretary of State for India stood firm in his conviction. In reply to the Viceroy's letter he wrote on 9 April 1943: para 9 of his long letter: " In paragraph 6 of your letter of 23rd March you expressed doubts as to the possibility of Zafrulla, as Judge of the Federal Court, engaging in the quasi-political activities of getting people together to study the problem of the future constitution. This is exactly why I deprecated his idea of trying to form something in the nature of a moderate party, but on the contrary encouraged the idea that he should get people together for serious constitutional study. The active political leaders are precluded by their whole history and temperament, as well as their maneuvering for power, from being capable of studying the constitutional problem, at any rate at present stage. I should have thought it was just a kind of thing that a judge could do without prejudice to his judicial character, to get together professors, publicists and other thoughtful people not too deeply committed to politics in order to collect the material facts which are essential to any understanding of the constitutional problem. For the Government to set up such a body would at once arouse as to its composition, terms of reference, etc. On the other hand, if such a body grows up of

itself through the personal activities of someone outside active politics and remain underground or at any rate unpublicized in its earlier stages and then only publicized by such memoranda as it may issue, it will have a much better chance. I confess I can see no other way of preparing for a post-war solution." (35).

(The Viceroy appended a note: One wonders what Gwyer would think of this. L)

When the American Foreign Secretary came on a visit to India the Secretary of State for India suggested to the Viceroy in his letter of 20 April 1943 that an opportunity must be created so that he could meet people like Sir Zafrulla.

Sir Zafrulla came back to India and resumed his duties at the Federal Court. To quote from his autobiography would formulate the background to the Viceroy's forthcoming letter. Sir Zafrulla wrote: "He took particular care that in cases, whether civil or criminal, in which the Crown was a party, the private litigant should suffer no prejudice because of his lack of adequate resources. He adopted a very liberal attitude towards the accused in criminal cases. After the departure of Sir Maurice Gwyer he began to be known as the dissenting Judge, because of his efforts to keep alive the spirit that had inspired the first Chief Justice". He has elaborated his attitude in a little more detail in his Urdu Autobiography *Tehdis-e-Nemat*, and I venture to render it into English and quote: "After the 1942 disturbances the Governor General established Special Tribunals under an Ordinance, to try the accused, and delegated discretionary powers to the District Magistrates to transfer any criminal case to the Special Tribunals for trial. The validity of the Ordinance was

challenged the Federal Court in a criminal appeal. At the time of the hearing the Chief Justice was on leave. Sir Srinivas Vardachari was the acting Chief Justice. An English Judge from the Patna High court was appointed temporarily to hear the appeal. He was also on leave in Kashmir but had to be called back to participate in the hearing. Sir B.L.Mitter was representing the Crown. In the first three days of the hearing Sir B.L.Mitter, concluded from the critical attitude of the Acting Chief Justice and me that most probably we were not in favour of the validity of the Ordinance. On the fourth day he requested the Court to postpone the hearing on the grounds that the Secretary of State for India has telegraphically permitted certain convicts from a certain court to appeal to the Privy Council. Since the question of the validity of the Ordinance would come up before the Privy Council, therefore it is requested that the hearing be postponed, because the Federal Court ruling could also be challenged in the Privy Council. On hearing this the third Judge who had to cancel his leave to come back to the Bench remarked that he was astonished to know that. He was summoned back because of the urgency of the matter and now the Crown Counsel wanted a postponement, presumably due to adverse remarks of my colleagues, therefore, I am against the postponement of the hearing.... I asked the Crown Counsel whether he could put the said telegraphic message on record? He looked towards Mr. Shevexlal, the Joint Secretary Ministry of Law, and he replied in the negative.... I and Justice Vardachari agreed that the said Ordinance gives the District Magistrates the discretion and that to some extent delegates legislative powers to the District Magistrates, and the Governor General has no authority to delegate such powers, therefore, this part of the Ordinance is unconstitutional and Void in the eyes of Law. The third Judge differed and a split majority ruling was issued.(36)



In this back ground/the Viceroy's letter of 28 August 1943 to Mr. Amery opens with "The Federal Court are hard at it on a variety of applications in connection with these Habeas Corpus cases. I have been watching their proceedings as reported in the press with a great deal of interest, partly because we now for the first time have Spens as the presiding Judge; partly because of the relevance of the impression that those discussions may produce to our decision about the extension of the jurisdiction of the Court. I cannot say that so far I have been very greatly impressed. I am not in a position to speak about purely legal aspects, but as a layman I get the impression that far more talking has been done by the two Puisne Judges-Vardachari and Zafrulla-- than by all the various advocates put together; while the amount of judicial humor whether from Zafrulla or Vardachari is well above the best days of Mr. Justice Darling. The Chief Justice has intervened only once or twice, and then on clearly relevant and important points. He is obviously holding his fire, but so much turn on the Federal Court producing a greater impression of dignity, objectivity, and restraint than in the past that I could wish his colleagues had been a little more cautious so far." (37)

On 20 October 1943 Field Marshal Viscount Wavell took over as the new Viceroy of India. He sent a secret note on 29 September 1943 to the Viceroy's Private Secretary preceding his arrival in India. The note has been published in the Viceroy's Journal and now is recorded in the documents of the Transfer of Power. He wished to select, say, 10 or dozen political leaders and others and cable to Governors concerned to invite them to meet me in Delhi on a given date: invitation not to be issued till I give signal... one of the aims of this was "to get together a body to discuss constitutional problem if and when conditions

considered favorable." One of the possible nominees was Zafrulla Khan." (38)

From this date up to February 1945, there is no mention of Sir Zafrulla Khan in the published documents. The reason possibly could be that he was seriously fastened to his court duties in the Federal Court. Mr. Amery, the Secretary of State for India wrote to Lord Wavell, the new Viceroy on 7 February 1945. Paragraphs 4 and five of his letter: I am very disappointed to see from telegram No: 1137 of 3rd February from the Information and Broadcasting Department that Sir F. James will not, after all, be able to visit the U.S.A. Both my Office and Minister), of Information are, however, looking forward to his undertaking some speaking engagements during his visit to this country in April or May.

It has been made so clear to me that there is a real need for European speakers with up-to-date knowledge of Indian conditions in America that our failure to produce any this year has been decidedly unfortunate. I very much hope that it will be possible to produce two or three really good Europeans for the next season commencing in September. I gather that P.J.Griffiths is likely to be available then, and I am sure he would be as big a success in the U.S.A as he was during his short visit here last year.

I know that your Department of Information and Broadcasting have been planning to send some Indian speakers to America this season and Zafrulla has mentioned to me that he would like to do something in the recess; and as he has raised the point himself I wondered whether, if there were no objection at your end, you might think it worth while enquiring from Bajpai whether it would be useful for him to visit the U.S.A then. There is, of course, some doubt about this if for no other reason than

the lecture season in America closes at the end of May. I have said nothing to Zafrulla about this, but if such a plan would fit in with Sultan Ahmad's arrangements for Indian speakers in America you might look to put it to him on his return. My Office is in touch with the Office of the High Commissioner with a view to arranging an air passage for him about the middle of March to enable him to get back in time for the work of the Federal Court". (39)

The Secretary of State for India was probably taking more interest in this visit because the India Committee of the War Cabinet was taking up for discussion the constitutional proposals of Sir Zafrulla and Sir Sultan Ahmad, for the solution of Indian Constitutional problem. Mr. Amery noted on the 16 February 1945 : " I circulate, for information , a note ( Appendix I) in which Sir Zafrulla Khan gives his views on a possible means of solving the communal problem in the constitutional field.

Sir Zafrulla was a member of the Round Table Conferences and the Joint Select Committee and subsequently of the Viceroy's Executive Council. He is now a Judge of the Federal Court and has come here as leader of the Indian delegation to the Commonwealth Relations Conference convened by the Institute of International affairs. He has a very acute mind, is a Punjabi who represents the moderate Muslim point of view, but unfortunately has little personal following as he belongs to an unorthodox sect.

The points of resemblance between the suggestions made by Sir Zafrulla Khan and Sir Sultan Ahmad are more numerous and striking than the differences. Neither advocates Pakistan. Both recommend a Federal Centre with strictly limited powers, residuary powers remaining with the units. They differ as to the units, Sir Sultan contemplating a redrawing of boundaries and

Sir Zafrulla preferring to use the existing provinces, leaving their boundaries unaltered for 25 years. Both stipulate, in varying degree, a minimum Moslem representation in the Fedral Executive and Federal Services. Sir Zafrulla claims a 50% share in the Executive; Sir Sultan is content with 40% (coupled with 40% Hindus, 10% Depressed Classes and 10% others). The latter however, while content with a similar communal ratio in the Civil Services, demands 50% of the Defense Services; Sir Zafrulla thinks the Moslems would acquiesce in a 40% share of the Defense Services and one third representation in the Civil Services. In one respect or other these communal claims would be contested by Hindus, who would also be opposed to the conception of weak centre.

Sir Zafrulla Khan makes no reference to the possibility of an interim reconstruction of the present Government of India. Sir Sultan Ahmad definitely recommends that the drafting of a new Indian Constitution should precede the setting up of a provisional Government.



## APPENDIX I

Note by Sir Mohammad Zafrulla Khan.

A Suggested Solution of the Communal Problem in India.

To whatever degree the validity of Muslim fears of Hindu domination in a free India may be open to question, there can be no question that such fears are deep rooted and have for some years past poisoned the relations between the two communities. No constitutional settlement is possible unless the majority community is prepared to meet these fears in a sincere and generous spirit. To engender in the Muslim mind even a provisional sense of security it is necessary for the majority community to declare unequivocally that the future constitution of India must be based upon the consent and support of Muslims freely expressed and voluntarily given. If the Muslims are convinced on this score it might be possible to persuade them to consider on their merits constitutional proposals which may be designed while retaining the unity of India to afford to the Muslims the fullest and freest opportunities of cultural and national development.

The Indian Provinces have already made such advance towards autonomy that nobody would to-day suggest a reversing of the process and setting up of a unitary Government for the whole of India. The choice is between some sort of federation or confederation on one hand, and the splitting up of India into Muslim and Hindu blocks on the other. The crux of the problem is to discover some form or shape for a central Government which would be acceptable to the bulk of the Muslims. For this purpose it would be inevitable to extend the scope of provincial autonomy to the utmost practicable limit even at the risk of

leaving the centre more limited, weaker and with less adequate powers than would otherwise be desirable. This no doubt is being progressively realised.

The experience of the working of federal constitutions in other countries has been that a federal centre always tends to draw power unto itself with the passage of time, more particularly in the periods of emergency. If, therefore, for the sake of assuring Muslim support for a federal India it becomes necessary to start with a centre possessing only limited powers, it would be worth while entering upon the experiment in the hope that once Muslim fears were set at rest and a spirit of mutual trust and co-operation had been engendered, the units might of their own accord desire to get closer together and work in greater accord and harmony, even in spheres which the letter of the constitution had left in the complete control and discretion of the provinces.

It is suggested that for the purpose of the future federation or union of India, India may be divided into twenty units, twelve being British Indian units and eight States units. The British Indian units would consist of the eleven Governor's provinces as at present constituted and Baluchistan, which, for the purposes of the federation would rank as a British Indian unit, whatever may be the shape of its provincial constitution. The States would be asked, in case they desire to come into the federation, to form themselves into eight units for that purpose. The field allotted to the federation for the exercise of its executive and legislative authority, must be confined to the subjects of defense, external affairs, sea custom, currency and exchange.

Certain other subjects like civil aviation, railways, posts, telegraphs and telephone, etc., which are at present administered from the centre, would be allotted to the provinces for purposes

of administration, but a certain amount of control and authority in respect of them would be reserved to the centre to secure uniformity in respect of standards, etc., and to safeguard against discrimination. All other subjects would be purely provincial. Residuary powers would also be vested in the provinces.

The subject with which the federal legislature would have to deal would not require a great deal of legislation. The centre should, therefore, have a purely federal single chamber legislature, small compact and business-like. To reassure the Muslims against any fear of domination at the centre by the majority community, it would be essential to give each unit equal representation in the federal legislature. It is suggested that each unit should be entitled to send to the federal legislature five representatives which would limit the total number of the federal legislature to 100. If this is considered too small, each unit may be given the right to send seven representatives which would raise the strength of the federal legislature to 140.

These representatives would in the case of British Indian units, be elected by the provincial legislature (by Shahi Jirga or other corresponding body in the case of Baluchistan). Some machinery would have to be devised in the case of States for selecting their representative in the federal legislature. The States units would also have to agree to secure a certain proportion of Muslims among the representatives.

This device would not only serve to emphasize the federal character of the legislature, but would secure the Muslims a very substantial share of representation without recourse being had to any artificial schemes of weightage, etc.

Even when so constituted, certain restrictions would have to be imposed upon the powers of the legislature. In the first place

there should be no power either in the executive or in the legislature to alter the boundaries of the British Indian units for a certain specified period-- say 25 years. Thereafter re-arrangement of boundaries between provinces may be carried out with the agreement of all interests likely to be affected thereby. It is of the utmost importance that the question of re-arrangement of boundaries between provinces should be left severely alone till the new constitution has had time to get into smooth working order. If this question is embarked upon at this stage, it will give rise to difficulties and conflicts which it may be found impossible to resolve.

It should also not be open to the legislature to carry through any amendments of the constitution without the consent of a majority of the representatives of each unit. If it is desired to make legislation on any particular matter subject to the consent of a majority of the representatives of a certain number of States units or of any particular group of British Indian units, provision could be made in the constitution to that effect. Over the rest of the fields the legislature could operate in the ordinary way by a majority. Safeguards for the minorities with regard to religion (including the free profession, practice, preaching and change of religion) culture, education, etc., should be so framed as to be capable of judicial determination so that any breach or contravention of them may be rectified by judicial action. This would make the Supreme Court of the federation the ultimate guardian of the minorities and indeed even of the majority in respect of these matters.

The Muslim claim that they form a distinct nation and if they agree to unite with the rest of India, to set up a federal centre for the whole of India, they must have a 50% share in all federal services. It is apprehended, however, that if the shape of



the constitution is acceptable to the Muslims and is such as to reassure them against a domination of the majority community, they might be willing to abate a portion of their claim in respect of the services. Their chief apprehension relates to the Defense Services. They are extremely anxious that nothing should be done in the new order of things which should place them in a position of inferiority so far as defense arrangements are concerned. Nevertheless, it might perhaps be possible to persuade them to accept a 40% share in the defense services provided that this was assured to them in all arms and sections, technical as well as non-technical, a 33 1/2 % share in the remaining federal services may be regarded by them as not too inadequate.

There are two spheres, however, where a claim to a 50% share must be accepted if any settlement is to be achieved. The Federal Ministry must be constituted on the basis of 50% Muslims and 50% non Muslims. This is not really a big concession as it might at first sight appear. In effect it would probably mean no more than the salary of two extra Muslim Ministers, but as a gesture of goodwill and a means of creating confidence and providing reassurance, it would be invaluable.

The head of the Federation should be alternately a Muslim and a non-Muslim.

The pivotal safeguard would be the composition of the Supreme Court in as much as the Court would be the ultimate guardian of the Constitution and the safeguards provided for the minorities. The number of Muslim Judges of the Supreme Court should at no time be less than one half of the total strength of the Court. The Chief Justice should be alternately a Muslim and a non-Muslim, Muslim Judges should be appointed on the recommendation of the Chief Justice when he is a Muslim and

on the recommendation of the senior Muslim Judge when the Chief Justice is a non-Muslim.

No attempt has here been made to deal with the Constitution of the Provinces as the main controversy between the communities relates to the centre. So far as the provinces are concerned, the broad principle must be accepted that all the special provinces designed to safeguard minorities and special interests must be framed on a reciprocal basis, that is to say, the minorities in Muslim provinces should be placed, so far as is practicable, in the same position as is assigned to the Muslim minorities in non-Muslim provinces." (40)

Sir Zafrulla Khan was the founder President of the Indian Institute of International Affairs, position he continued to hold till the autumn of 1945. In the spring of 1945 he led the delegation of the Institute to the Commonwealth Relations Conference, held at Chatham House, St. James's Square, London which was the headquarters of the Royal Institute of International Affairs. In the opening session the leader of each delegation was called upon to make a short speech outlining the contribution of his country towards the prosecution of the war. To quote from his autobiography: " (He as) the leader of the Indian delegation summarized the splendid contribution of India in a few striking sentences. India was maintaining a force of 2% million combatants, voluntarily recruited, at the various fronts. This force could be doubled, tripled, quadrupled without any measure of compulsion, if need arose. Its contribution in the shape of commodities, manufactured goods and war supplies of all descriptions could be estimated on the basis of the fact that in the course of war it had retired its total indebtedness to Great Britain and had built up a credit vis-a-vis Britain of approximately 2,000 million sterling. He drew breath, looked

round, and in a tone of pleading, almost of entreaty, continued: Statesmen of the Empire, does it not strike you as a tragic irony that while maintaining a force of 21/2 million men in the field in defense of the freedom of the Empire, India should be suppliant for its own freedom? To drive his point home he instituted a comparison between China and India. He said he meant no disparagement of China, but it would not be denied that, except in respect of population India was far ahead of China in every sphere. Then how was it that China was recognized on all hands as a great power India was denied even the status of a free country? Was it not because, for good or for ill China stood on its own feet and India was dependent on Britain? India is on the march. It shall be free; within the Commonwealth if you will accord in its due position; outside the Commonwealth, if you leave it no choice". (41)

A short recourse to his Urdu Autobiography *Tehdis-e-Namet* would also be appropriate. He wrote: "Some time in the future Mr. Asif Ali, a prominent Congress Leader of India told me that at the time of your London speech the Congress leadership including me were detained in the Ahmadabad fort. We were listening to the proceedings on the radio. when you said, "Statesmen of the Empire!" we became more alert and came nearer to the radio, and Nehru, almost fixed his ears to the radio set. When you finished your speech Nehru said this gentleman has warned the British Government more forcefully and fearlessly than we had ever done. (42)

The official reaction in India was not favorable. Field Marshal Viscount Wavell refused to accept Mr. Amery's suggestion to send Sir Zafrulla to America. Para 4 of Lord Wavell's letter of 21 February 1945: "I have consulted the Information and Broadcasting Department about European

speakers for the U.S.A. and about the suggestion that Zafrulla might do an American tour. Spens is a little restive about Zafrulla's travels and was reluctant to agree to his visit to the troops in Italy. Zafrulla's recent speech in London, as reported here, did not sound very helpful or sensible." (43)

On the other hand London had received the speech with warmth. Sir Zafrulla wrote: "when the delegates marched out at the end of the session, the evening papers were already on the streets with the full text of his speech and his picture" (44).

"That evening there was a banquet by the Government in Claridge's Hotel in honor of the delegates to the Conference, presided over by Lord Cranbourne, heir to the Marquisate of Salisbury, Leader of the House of Lords. The entire cabinet, except the Prime Minister, was present." There again in this gathering Sir Zafrulla had to make a speech in reply to the toast. He "after eulogizing the Government and people of Britain for their heroic stand against aggression, and the skill and wisdom with which they have resolved the numerous problems that had confronted them one after another, he reverted to the problem of India that still awaited solution. Will you then, he challenged, acknowledge defeat in the case of India alone? It is said the problem is complex. But was that a reason for not attempting a solution? What was to be done about communal differences? He would hazard a suggestion. Let His Majesty's Government make an announcement that if by a certain date the various communities in India agreed upon a constitution for India as a Dominion, statutory effect would be given to their agreement. Failing agreement by the due date, Government would sponsor and pass through Parliament a Bill setting up India as Dominion, and providing adequate safeguards for the minorities. As soon thereafter as the various communities reached an agreement to



modify the interim constitution effect would be given to their agreement. The speech was well received and was given a good press next morning".(45)

The War Cabinet's India Committee discussed the situation in India and the Secretary of State for India's memorandum dated February 22, 1945 mentions in para 4: "Sir Sikander Hayat Khan's scheme proposed a division into seven regions, only two of which were predominantly Moslem. And Sir Mohammad Zafrulla Khan (in a memorandum circulated separately to the committee) would seem to be content with 13 Hindu units and 7 Muslim units in a scheme which discards regionalism and is based on the existing Provinces and eight groups of States. The latter also supposes that the Moslems would be content with 40 per cent of the defense services and half of the other federal services provided that the Federal Ministry (and of the Supreme Court) were Moslem. If something on these lines would really satisfy the Moslems it should be possible to devise better regional groupings than Coupland's." (46)

The Secretary of State for India Mr. Amery again suggested to Lord Wavell to nominate Sir Zafrulla for World Organization Conference at San Francisco on April 25th and the proposed Commonwealth Conference on the subject in the middle of March. Paragraph 7 of his letter dated 22 February 1945: "Zafrulla expressed to me the hope that he might be considered for the former (the latter he is not yet aware of) on the ground of his interest in constitutional problems. No doubt he would be quite a useful member, and his being here up to the meeting of the Commonwealth Conference would be convenient. On the other hand, I gather that Spens is very anxious to have him back by the 17th, and you will want in any case to send someone, I imagine, from your Executive, so that Zafrulla would only be

additional member. His idea was that if he attended the San Francisco Conference at the end of April he might do useful work, as he did two years ago, making his way back slowly across the States, and talk quietly to influential people about the Indian situation." (47)

On 28 February 1945 the India Committee of the War cabinet met at 11 Downing Street. Mr. Attlee was in the chair. The Lord President said "that it was clear that the general sense of the Committee was against the scheme which had been advocated by the Secretary of State, which they did not regard practicable or safe in present circumstances. He suggested that at their next meeting the other alternative measures which had been under examination should be reviewed, and that in this connection arrangements should be made to circulate to the Committee the text of a recent speech by Sir Zafrulla Khan which contained a suggestion that we should give the Indians a year in which to agree a constitution, and warn them that at the expiry of that period, we should take on ourselves the responsibility, if they had not reached agreement on a solution." The Secretary of State for India said that he recognized that the sense of the Committee was against him, though he remained of the opinion that his scheme was right and practicable and would bide his time. He would like to consider the possibility of working in the direction he had advocated gradually, if it could not be done immediately. He would arrange for the circulation of Sir Zafrulla Khan's speech" (48)

Mr. Amery in his letter of February 28, 1945 to Lord Wavell, wrote at para 5: I hear the Indian delegation have done very well and that Zafrulla has been outstanding. I confess I do not see any harm in his rather outspoken demand that we should hand over to an interim constitution by a certain date if Indians

cannot frame their own within that time. That does not differ very much from my own idea, except that I regard the existing constitution as the best interim constitution that can be devised, subject to your securing a more representative Executive and a better Legislature by adopting that part of the 1935 Act in so far as it applies to British India." (49)

Next come the memorandums dated 2 March 1945, circulated by the Secretary of State for India for information of the members of the India Committee as directed by the Lord President in the previous meeting. "I circulate for information an extract (Annex 1) from a speech by Sir Mohammad Zafrulla Khan made at the dinner given to the Delegates attending the British Commonwealth Relations Conference on the 19th February. The extract covers all that part of the speech which related to the Indian constitutional question.

I also circulate (Annex II) a speech made by Sir Zafrulla Khan at the opening session of the Commonwealth Relations Conference on the 17 February. L.S.A

## ANNEX 1

I am sure I am speaking for every one of the Delegates in our group when I say that conferences like these are of the utmost value to India. As India advances steadily but surely to occupy her due place among the nations of the Commonwealth, she must begin to look more and more around and outside of herself. In the past there has been too great a tendency in my Country for public opinion to concentrate itself on India's political relationship to Great Britain, and too little attention has, I fear, been paid to world affairs. These conferences provide valuable opportunities for India to extend and strengthen her contacts with the United Kingdom and the Dominions on a purely non official and absolutely equal level. That is why India has always been at pains to arrange to be represented at these conferences, and to make her due contribution to their deliberations.

Some concern has been expressed in certain quarters regarding the part that Great Britain is to play in post-war arrangements for security. There has been a note of anxiety, perhaps even pessimism, running through some of the speeches and writing on the subject. I cannot help feeling that a satisfactory solution of the Indian problem would serve more than any other single factor to allay apprehensions and anxiety in that score. Would it be too much to hope that this conference might be able to furnish some guidance in that respect ? I am aware that the best minds of this country fully appreciate the tremendous importance of that question, and some of them are engaged in grappling with it. Nevertheless, it would be a matter



of great satisfaction and gratification and would indeed be a great achievement if this conference could throw some light on the problem and give a lead towards its solution. The attitude of His Majesty's Government appears to be that they having announced their policy regarding India, it is up to India now to make the next move. I do not deny that the responsibility for the next move does rest upon India, but failing a move from that direction, is Great Britain released from all further liability concerning India? In the interest of the United Kingdom itself, in the interest of the Commonwealth, and I will make bold to add in the interests of the world peace and security, the situation must not be permitted to deteriorate any further.

The strains and stresses imposed by the war upon the United Kingdom have not prevented it from making big strides in many directions. She has not been too timid to tackle tremendous and intricate problems of social security at home, and is now engaged upon rearing an admirable structure of social security. In the matter of the Colonies, she has furnished a new orientation to the whole question, and has set herself and the other Colonial Powers a new objective in that field. Herself she is already moving out of strength towards achievement of that objective. In the sphere of foreign relations she has struggled through to an understanding with the United States, to what is still more satisfactory, with the U.S.S.R. Is she content to accept defeat only in the case of India?

I am not unmindful of what are known as "The Cripps Proposals", but whatever their merits, they have failed to resolve the deadlock. Is no further effort to be made by the United Kingdom? May I appeal to you, who are gathered here from all parts of the Commonwealth, to bring constructive minds to bear on this problem with the solution of which are bound up so many

grave and important matters bearing upon post-war arrangements, so that when victory is achieved, which consummation happily seems to have been brought so much nearer in this month of February 1945, the Indian question may also have been settled. Surely that is well worth striving for.

The problem, as we all know, is both difficult and complex. The various parties in India have taken up mutually exclusive and irreconcilable positions. I have only one suggestion to put forward tonight. Would it not be feasible for His Majesty's Government to announce that it would be prepared to implement any agreed settlement that might be put up on behalf of India, within a period of one year from the cessation of hostilities against Japan, but that failing such a settlement within that period, His Majesty's Government would place before the Parliament itself proposals concerning the future constitution of India, designed to place India on a footing of complete equality with the Dominions? It would have to be made perfectly clear that the solution that His Majesty's Government may arrive at would only be provisional, and would continue in force only so long as Indians themselves were not agreed upon an alternative. When an alternative is agreed upon, it would take the place of the provisional constitution. Any decision that His Majesty's Government may arrive at with regard to this provisional constitution will no doubt fail to give complete satisfaction in as much as the claims of every one of the parties in India would have to be subjected to a good deal of pruning to make them fit into any workable constitution. But I am not without hope that, if His Majesty's Government were to undertake this responsibility upon its own shoulders, it would either result in accelerating agreement among the parties in India or in persuading them to accept and work the constitution framed by His Majesty's

Government over a long enough period to discover in what respects it was susceptible of improvement. I would beg you earnestly to forgive me for taking up so much of your valuable time over India, but this matter of a settlement between Great Britain and India lies very close to my heart and that lies close to one's heart is bound to well up on an occasion like this. Believe me, issues far more momentous and vital to the future of peace and civilization hang upon a solution of this problem than is perhaps being appreciated at this moment.

Turning now to the question of post-war security arrangements, which is the principle item set down for discussion on the Agenda of the Conference, may I be permitted to say how happy a coincidence the timing of the Conference has proved to be. The Conference has followed quickly after the Crimea Conference and just long enough ahead of the projected San Francisco Conference, to discuss it in all its concrete aspects.

It has been made abundantly clear that every member of the Commonwealth may be relied upon to come into the new security organization in its individual capacity. On this there can be no manner of doubt. But need it stop there? The nations of the Commonwealth have learnt to work together, and to fight together; they understand each other so well that surely there is great deal of room for co-operation and collaboration within the Commonwealth with regard to world security. The Commonwealth has a very valuable contribution to make by way of constructive proposals, and effort, in the setting up and implementing of the proposed world organisation. May not the Commonwealth, with all its experience of the growth and development of free people in voluntary association for certain beneficent purposes, to be in a position to point the way to an

effective and efficient world organization? Would it not bring to the service of the new body that is about to be born, not only the resources of its strength, but also the wealth of its experience and knowledge? Our contribution of strength may perhaps have to be individual (though even these, if co-ordinate, would be far more valuable than their mere sum total); but surely our moral and spiritual contribution would be based upon our common ideals and standards of culture and civilization that we are all anxious to see established and safe-guarded. How many times the value of these contributions could be multiplied if the Indian question could be settled in advance, may easily be imagined.

Was it not William Pitt who said "England will save herself by her exertions and save Europe by her example"?

Would not the Commonwealth, having saved itself by its strength, make its full contribution towards safeguarding the post-war world with the help of its united strength, experience and knowledge".



## ANNEX II

The principal changes that have taken place in India since 1938 are mainly related to the war. The war has brought to India a forcible and vivid realization of its own strategic importance, and indeed of its potential strategic domination in all that vast area of oceans and lands that lies between Australia and the west coast of Africa. Early during the war, long before Pearl Harbor, India had become the principal base of supplies in that area. The entry of Japan into the war served still more to emphasize India's vital position in that respect. India has not only proved to be one of the main sources of supply in respect of primary products and raw materials, but has through the rapid mobilization of its manufacturing capacity and industrial resources, become the principal arsenal of the United Nations in that part of the globe. Some idea of India's great effort in this respect may be gathered from the fact that during the last five years, from being a debtor country, India has converted itself into a creditor nation with large sterling balances. In respect of manpower also, India's effort had become no less remarkable. Without the aid of any measure of compulsion whatsoever, she has succeeded in putting into the field 21/2 million men, largely officered by their own nationals, who have given and are giving a splendid account of themselves in many theatres of the war. If need arose, this number could easily be doubled and perhaps quadrupled. The contribution that India has thus made towards preserving the liberties of the nations of the Commonwealth and safeguarding the future peace of the world has not been achieved without creating serious ferment in many directions. The repercussions on India's economic life have been grave, but are also full of

beneficent possibilities. Both the supply effort and manpower drive have created a much larger number of technical and skilled personnel than India has ever possessed before, though the number still falls grossly short of its potential requirements. This is a very welcome change which should go a long way toward helping India in its efforts to balance its economy in the post-war years. But the repercussions are not to be confined to economic sphere-- indeed they are making themselves felt strongly in other directions. India is growing impatient of its political dependence on Great Britain. Its sense of disappointment and frustration in the political field is being aggravated by the fear that it may be relegated to a position in inglorious obscurity in the post war arrangements, the proposals concerning some of which will form the subject matter of discussion in this Conference. The appreciation of India's position in this behalf may, perhaps, be helped by instituting a comparison between India and China. China is to-day freely recognized as one of the four big nations upon whom will devolve the principal responsibility for safeguarding world peace and shepherding and directing human effort into beneficent channels after the horrors of the war have been brought to a close and the miseries engendered by it have to some degree been softened. India does not compare unfavorably with China in respect of population or area. In every other respect China can stand no comparison with India. I have no desire to disparage China in any respect, nor do I wish for one moment to discount an iota of the praise and admiration justly due to that great country for its heroic resistance to Japanese aggression during the last eight years, but it will I am sure be freely recognized that in respect of natural resources and their development, manufacturing capacity, industrial potential, technical and mechanical skill, capital investment, literacy and higher education in the arts and sciences, communications,

public health and veterinary services, the maintenance of law and order and the administration of justice and a host of similar matters, India stands far ahead of China whatever may be its position vis-a-vis the United Kingdom, the United States and the U.S.S.R. What is it then that makes the claim of China to be ranked among the great nations irresistible and makes the same claim on behalf of India unacceptable and unentertainable? China no doubt possesses an ancient culture, but so does India, and China will be the first to acknowledge the debt it owes to India in the cultural field. It may be said that China's claim is admitted on account of its potentialities, but India's potentialities are, I venture to submit, even greater. It may be objected that India suffers from division and conflicts, but the divisions and conflicts in India do not threaten to prove intractable than the differences that divide the Communists and Kuomintang in China. Though often made a victim of aggression, India has throughout her long history never been guilty of aggression herself. She is no less willing and eager than China to assume and is in a far better position than China adequately to discharge the obligations that her inclusion among great nations, a position to which she is justly entitled, may entail. Is not then distinguishing feature between China and India only this, that for good or for ill, China stands on her own political feet, contending against the storms that have threatened and may threaten to overwhelm her independence, while India is politically dependent upon Great Britain? Statesmen of the Commonwealth, does it not strike you as an irony of the first magnitude that India should have 2 million men in the field fighting and struggling to preserve the liberties of the nations of the Commonwealth and yet should be a suppliant for her own freedom? How long, do you think, will she be prepared to wait? India is on the march. You may help her, or you may hinder her,

but none shall stop her. India shall be free, within the Commonwealth, if you will let her and accord to her the place that is her due; without the Commonwealth if you leave her no alternative."(50)

Again I revert to Sir Zafrulla's autobiography: "The following after noon he was told by the Leader of the British delegation to the Conference that Lord Wavell, Governor General of India, had been summoned for consultations. The last phase of India's march towards freedom had started". (51). Sir Zafrulla has elaborated this a little more in his Urdu Autobiography *Tehdis-e-Nemt*, and I quote : "Two days after these two speeches I happened to meet Mr. Clement Davis of the Liberal Party on the way to the Chatham House from my hotel. He was also going there for the Conference. On seeing me he said "Congratulations! in consequence of your speeches the Cabinet has summoned Lord Wavell to London for consultations forthwith. But this is still secret, please do not disclose it to anyone yet. So Lord Wavell came and the final stage of the constitutional struggle of India started". (52)

The Secretary of State for India Mr. Amery wrote to the Viceroy Lord Wavell on March 8, 1945. Paragraph 7 of his letter: "Zafrulla seems from all I hear, to have led the Indian delegation at the Commonwealth Conference with great ability and to have made a considerable impression with his main argument that undue delay in setting India on her feet in one way or the other will gravely prejudice the chances of her remaining within the Commonwealth. You and I do not differ from him in this point. On the other hand, if it comes to creating an interim constitution for India pending agreement, I can think of no better interim constitution than the present one, with such minor trimmings as will be involved in bringing the legislature up to



date and getting rid of the economic safeguard. Any other constitution which we attempted to devise here would probably be repudiated by everyone, and more particularly by Jinnah as emphasizing our intention to prejudice the case against Pakistan; whereas keeping the existing constitution going would not have the same psychological effect". (53)

Sir Zafrulla had to go to England in May 1945 on account of his illness. The Viceroy Lord Wavell was already in England and Sir John Collville was the acting Viceroy. Incidentally Sir Feroz Khan Noon was also in London. When the Acting Viceroy got to know of Sir Zafrulla's sojourn in England he instructed his Private Secretary Mr. Abell to inform Mr. Turnbull, the Private Secretary to the Secretary of State for India that Sir Zafrulla and Sir Feroz have probably travelled to England for political motives. Then he elaborated his misgivings about both gentlemen in his letter of May 22, 1945 to Mr. Amery. Paragraph 5 of the letter reads: " You have no doubt seen Abell's telegram to Turnbull about Zafrulla's journey to the United Kingdom. It is strongly suspected here that he has gone for political purposes and both Spens and I are annoyed with him. Abell has sent to Turnbull a copy of a letter of Spens to the Registrar of the Federal Court which shows that Spens was taken by surprise. I have had enquiries made about his priority air passage and find that he obtained it on the certificate of the Punjab Medical Board; it is of course true that he has diabetes. Although Zafrulla spoke as a nationalist when he was last in London and obtained a good deal of applause from the nationalist press out here, I suppose that he and Feroz may both have gone to London in the hope of preventing any constitutional proposals being accepted which might be unwelcome to them."

At number 9 is written: " I have just received your telegram

No. 319 of 19th May about Feroz's departure from San Francisco. This explains the situation and makes it clear that Feroz's intention was known in London beforehand. I must admit however that I am not entirely mollified ! I think the Government of India should have been informed, as I have been put in somewhat awkward situation with Council. I am having a Council meeting tomorrow and will inform them of what has happened. There may be some questions as Feroz's movements are followed with keen interest." (54)

The War Cabinet's India Committee took up Sir Zafrulla Khan's proposals and discussed them at length in their meetings from March 14 through April consecutively. Lord Wavell was in London and did not want to return empty handed as Sir John Anderson put it: " Lord Wavell had had 18 months as Viceroy and that during that period nothing had happened in the constitutional field and that he was now back in this country for consultation, made it very difficult to let him return to India empty handed, with no declaration on the part of His Majesty's Government as to where they stood." (55) .

The rest is history. The summer election of 1945 put Labor in power. On 20th February 1947, the Prime Minister announced that His Majesty's Government were determined to transfer within definite period the responsibility for the government of India to a Central Indian Authority, and in a case where this may not be feasible to a Provincial Authority. This announcement caused Sir Zafrulla great anxiety in view of the situation in the Punjab. The province was predominantly a Muslim province but was being ruled by a Muslim Prime Minister of the Coalition Government of the Unionist Party, which had by then included in its ranks quite a substantial number of non-Muslim members. The Muslim League was the second biggest party but not in a

position to form its Government. Sir Zafrulla's anxiety was primarily for this cause that if the power is transferred to a party which is not predominantly Muslim in its structure, it would weaken the cause of Pakistan. So he reluctantly decided to write to the Prime Minister of the Punjab, Sir Khizar Hayat Khan to resign and clear the way for Muslim League and fulfill his responsibility in this regard. Sir Khizar, respected his advice and resigned forthwith. Sir E. Jenkins' report to the Viceroy Lord Wavell dated March 3, 1947, confirms: "On the morning of 2nd March Khizar telephoned asking if he and Qizilbash could see me in the early afternoon, as he had to address a meeting of the members of the coalition parties at 3.p.m. I duly saw him and Qizilbash at 2.15 p.m. when Khizar made it clear that he was not really interested in his meeting of Assembly members, but wished to ascertain my reactions to his immediate resignation. He said that he had consulted Zafrulla Khan who had been staying in Lahore for the last few days, and had come to the conclusion that Muslim League must be brought up against reality without delay". (56) Sir Zafrulla had done his duty to strengthen the hands of Muslim League in the Punjab.

On 3rd June 1947 the Prime Minister announced the scheme of partition of India. The same day Sir Zafrulla decided to resign and sent his resignation to the Chief Justice of India to take effect one week later. He had no intention to stay in India.

The day he relinquished his office on June the 10th 1947, His Highness the Nawab of Bhopal was in Delhi. As soon as he got to know of Sir Zafrulla's resignation from the Federal Court of India he immediately appointed him his Constitutional Advisor/ Diwan/ the Prime Minister and Sir Zafrulla accepted. Bhopal needed him badly and treated him with all the due dignity and honor.

He remained in Bhopal's service till 25th December 1947, during which period he spent most of the time in service of Pakistan, pleading Muslim League's case in the Punjab Boundary Commission and Pakistan's case of membership in the United Nations as Head of the Pakistani delegation.

Next chapter describes his contribution to the cause of Muslim State of Bhopal in India and newly created Muslim State of Pakistan in particular, from June 10, 1947 to December 25, 1947, when he was appointed the first Foreign Minister of Pakistan, by Mr. Mohammad Ali Jinnah, the first Governor General of Pakistan.



On March 24, 1947 Lord Louis Mounbatten was sworn in as the last Viceroy of India. A cousin of George the VI he was regarded as a Crown Representative by the Ruling Princes of India and they expected him to be on their side helping them and safeguarding their rights and privileges. After Mr. Atlee's announcement of the 3rd June 1947, Lord Mounbatten, started post haste to urge upon the Ruling Princes to sign the Instrument of Accession with either of the Dominions. Clause 8 of the Indian Independence Bill, had given the States the option to accede to either of the Dominion or to remain independent. This was for the clarification of this point that Sir Zafrulla Khan was asked by H.H.Bhopal to proceed to London and watch the passage of the Indian Independence Bill through the Parliament and "take the advantage of any opportunity that might offer itself of procuring further clarification of the position in which the Ruling Princes might find themselves under the new Constitution".... He was preparing to set upon the journey when he received a message from the Quaid-e-Azam Mr. M.A. Jinnah to see him in Delhi." (58).

He went to Delhi and met the Quaid-e-Azam. There he got to know that H.E.H the Nizam wanted his services and had requested the Quaid-e-Azam to persuade him to go to Hyderabad. The Quaid-e-Azam told him that he had asked from the Nizam, a written assurance that the Nizam would abide by, any advice forwarded by Sir Zafrulla.. He submitted that he was not at all ready to go to Hyderabad in any circumstances whatsoever. The Quaid-e-Azam replied that the Nizam would not give the required assurance, therefore, the question of his going to Hyderabad would not arise and so it happened. It was not only the Nizam who was thinking of acquiring his services. There were others who were speculating about the same. The

Documents of Transfer of Power carry a letter from Lord Pathick-Lawrence to Lord Mountbatten, dated 3rd April 1947 : " I have read with interest the description in Mr. Herbert's letter of 13th February to your Political Secretary of the political situation in Hyderabad. In the atmosphere of communal and political tension on which evidently prevails in the State the path of any outsider who holds the office of the President of Council must be one of great difficulty. I imagine that Sir Mirza Ismail, owing to his previous experience of handling Hindus in two States, is an asset to the Nizam at this juncture and more remotely to the prospect of a united India. Possibly this would equally apply to Sir M. Zafrulla Khan, though I judge that there is no immediate prospect of his being asked to replace Sir Mirza". (59) Sir Zafrulla's reluctance was fully justified. Alan Campbell-Johnson wrote: I sat next to Ismail at Mounbatten's lunch party. He is a Moslem of moderate opinion, sober judgment and of high intellect, who is therefore in a somewhat isolated position. He spoke quite freely to me about the uneasy role of Premier to the Nizam...The Nizam's statecraft consisted largely of weaving complex conspiracies against his own Prime Ministers and ultimately depriving them of the power he had wrested for them. It was, by Ismail's account a depressing cycle of self-defeating intrigue". (60)

According to Lord Mountbatten "there were three states which were in particular quandary. These were Hyderabad, Bhopal and Kashmir, in which the Ruler and the Government and Army were of the opposite community to the majority of the people" (61) So their problems were complicated and had to be handled with utmost care. H.H. Bhopal struck the iron when it was hot and succeeded in getting Sir Zafrulla's services.

Leaving the Nizam aside, we had to return to Sir Zafrulla's

meeting with the Quaid-e-Azam in Delhi, on way to London. The Quaid-e-Azam also told him that he was chosen to be entrusted with the duty of presenting the Muslim League case before the Punjab Boundary Commission. "He said that he would be happy to serve as desired, but was just now preparing to go to London for a fortnight.

There would be plenty of time. Even the Umpire has not been nominated yet. When you get to Lahore the Muslim League case will be ready. You will only have to think out and settle your line of argument.

May I ask who is likely to be Umpire?

We do not know yet. Have you any suggestion?

No specific suggestion, but I would strongly urge that you should insist on the appointment of a Lord of Appeal. Anyone can make a mistake, but a person of the training and eminence of a Lord of Appeal is not likely to be influenced by any extraneous suggestions.

I shall keep in mind" (62)

He went to London, met his friends and told them the purpose of his journey. Lord Templewood, his old friend, "promised to try to obtain the desired clarification of clause 8 of the Bill in the House of Lords. The Under Secretary of State for India, Lord Listowell was in charge of the Bill in the House of Lords. When clause 8 was reached Lord Templewood enquired: may I assume that the clause seeks to provide that it would be open to a Ruler of a State to accede to either Dominion or to remain independent?

Lord Listowell nodded.

Lord Templewood: I take it that the noble Lord's nod

confirms my assumption." (63)

Sir Zafrulla has added a beautiful sentence, an irony of fate "But the march of events in the end overwhelmed the princely order, and the nod of a noble lord did not avail to avert or stem its fall": (64)

He was still in London when Sir Cyril Radcliffe, an M.P. and a practicing lawyer, was appointed the Umpire of the Boundary Commission of Punjab and Bengal. Sir Zafrulla called on him at his residence to get to know of him a little bit, but "could not discover in him a spark of enthusiasm for his great task" (65). The Boundary Commissions of Bengal and Punjab, were to divide two provinces and would throw the lives of millions of people into dislocation and misery, but the Umpire was unaware of this liability. In fact, the Boundary Commissions were a total farce. The boundaries had to be determined; rather these had been determined by the Viceroy and his Chief of Staff Lord Ismay, under the pressure of Congress. Lord Ismay has confessed in his Memoirs that according to the Plan which was submitted for final approval by His Majesty's Government, "Eastern Bengal and West Punjab were to go to Pakistan and Western Bengal which was to include Calcutta) and the Eastern Punjab were to go to India. (66)

Lord Mountbatten had blurted out his intentions about the East Punjab in a conversation with H.H. Bhopal and the Maharaja of Indore. While discussing the options available to the Rulers he said that "He fully realized the difficulties peculiar to Bhopal. They arose also in cases of Kashmir and Hyderabad, though not so seriously with Kashmir, which was so placed geographically that it could join either Dominion, provided parts of Gurdaspur were put into East Punjab by the Boundary Commission." (67) The Viceroy saw to it that it was done.



Even a Member of the Boundary Commission, Justice Mehr Chand Mahajan, wrote in his autobiography, *Looking Back* that : "I was not inclined to accept the invitation ( to be a member of the Commission as it seemed to me that the Commission was a farce and decisions would be taken by the Viceroy himself" (68). But the case of the Muslim League had to be presented before the Commission and Sir Zafrulla did it with brilliance and honesty.

As soon as he completed his assignment in London he went to Lahore direct via Karachi. Nawab Mamdot the President of the Punjab Muslim League and other Muslim Leaguers were there to receive him. The Nawab of Mamdot informed him that the Umpire had reached Lahore and had invited the parties to meet him and members of the Commission, Mr. Justice Din Mohammad, Mr. Justice Mohammad Munir, Mr. Justice Mehr Chand Mahajan and Mr. Justice Teja Singh at 11 a.m. next morning. Nawab Mamdot also told him that he would meet the Lahore Lawyers at his residence tomorrow. The meeting "did not take long. The Umpire gave his directions: Parties should put in their written statements by noon of Friday; the Commission would start hearing oral presentations on Monday. He would not sit with the Commission, as his role as Umpire would come into operation only if the Commission failed to make a unanimous or majority report. A verbatim record of the proceedings of the Commission would be forwarded to him daily"

"There were only two clear days for preparing the written statement. Much would depend upon what the local lawyers had prepared for him. He arrived punctually at the residence of Nawab Mamdot. There was no dearth of lawyers at least two scores were present. Many were known to him personally. After greeting all of them he enquired: "Gentlemen, which of you will

work with me on the case?"

What case? We know nothing of the case.

He looked in consternation at the Nawab of Mamdot and met with a bland smile.

Gentlemen I am much obliged to you for having taken the trouble to come here to meet me. I must get busy, as the time is short. I am sure you will forgive me if I withdraw." (69)

Then there is a long and moving story how did he supplicate God Almighty for help in that hopeless situation and how did Allah in His Grace answered his prayers. Khawaja Abdur Rahim, the Commissioner Rawalpindi Division, was on a special assignment in Lahore for rehabilitation of the incoming refugees. He had on his own, compiled the community-wise figures of the whole province to be able to foresee the influx of refugees from certain districts. He handed over all the data to him and offered that he would be ready to extend any kind of help he needed of him. Next day the Commissioner again had to come to his rescue to provide him two diligent and efficient stenographers/ typists to take dictation of the written statement from him because the promised stenographers/ typists of Nawab Mamdot never turned up and in fact were never heard of till the last moment. None of the lawyers who met him in Nawab Mamdot's residence came over to assist him in the case. Four Lawyers, two from Montgomery, one from Pakpattan and one who had settled in Gurdaspur came and offered their services voluntarily and did an excellent job, in preparing, checking, rechecking, verifying facts and statistics, and finally completing the presentation and submitting it to the Commission in time.

The Ahmadiyya Community assisted the Muslim League by hiring a Defense Expert from England at community expense.

who prepared relevant maps, diagrams and charts which proved of great immense value during the oral presentation of the case. The Head of the Ahmadiyya Community remained present in Lahore during the entire proceedings. He was conspicuous because he was the only spiritual leader who graced the hearings by his presence. Mr. Justice Mahajan did take notice of his presence in his autobiography: "The Mirza of Qadian, the Head of the Ahmadiyya Community was always present " (70)

It also became apparent to a Muslim member of the Commission, Mr. Justice Din Mohammad, that the boundaries had already been drawn and that the Commission was an eyewitness. He said that Sir Cyril Radcliffe was to go for an aerial view of the territory. Two members insisted on accompanying him. The pilot had been advised to fly on a specific air route. His instructions were written on a paper. The flight had to be cancelled due to poor visibility. Justice Din Mohammad managed to see the instructions. There was a clear line dividing the Punjab and allotting the evidently Muslim majority Tehsils of Gurdaspur and Batala to India. Justice Din Mohammad went to Delhi and asked Quaid-e-Azam's permission to resign from the Commission, but the Quaid refused it. Justice Din Muhammad told Sir Zafrulla all about that and made it clear that it was a futile exercise, because the boundaries were already drawn.

Chaudhry Mohammad Ali, a former Prime Minister of Pakistan has also taken up the issue of the Boundary Commission in detail. This excerpt is from his book the Emergence of Pakistan " On August 9, 1947 I went from Delhi to Karachi for a day to consult the Quaid-e-Azam and Liaquat All Khan about the Indian proposals of the treatment of the national debt. Before I left Karachi to return to Delhi, Liaquat

All Khan told me that the Quaid-e-Azam has received very disturbing reports about the likely decision on the Punjab boundary, particularly in the Gurdaspur District. In the Amritsar and Jullunder districts contiguous Muslim majority areas were also in danger of being assigned to India. He asked me, on my return to Delhi, to see Lord Ismay and convey to him, from the Quaid-e-Azam, that if the boundary actually turned out to be what these reports foreshadowed, this would have a most serious impact on the relations between Pakistan and United Kingdom, whose good faith and honor were involved in this question. When I reached Delhi, I went straight from the Airport to the Viceroy's house where Lord Ismay was working. I was told that Lord Ismay was closeted with Sir Cyril Radcliffe. I decided to wait until he was free. When, after about an hour I saw him, I conveyed to him the Quaid-e-Azam's message. In reply, Ismay professed complete ignorance of Radcliffe's ideas about the boundary and stated categorically that neither Mounbatten nor he himself had ever discussed the question with him. It was entirely for Radcliffe to decide; and no suggestion of any kind had been made to him. When I plied Ismay with details of what had been reported to us, he said he could not follow me. There was a map hanging in the room and I beckoned him to the map so that I could explain the position to him with its help. There was a pencil line drawn across the map of the Punjab. The line followed the boundary that had been reported to the Quaid-e-Azam. I said that it was unnecessary for me to explain further since the line, already drawn on the map, indicated the boundary I had been talking about. Ismay turned pale and asked in confusion who had been fooling with his map."(71)

British Statesman Philip Noel-Baker, (at that time) the Secretary of State for Commonwealth Relations, according to



Mounbatten's official biographer Philip Ziegler, "hardly gave the Viceroy an unequivocal acquittal when he told Attlee in February 1948 that Radcliffe had indeed altered his awards at the last minute, 'but we have no knowledge that this was done on the advice of Lord Mounbatten'." (72)

The Tribune, a leading newspaper of India has given all the credit for a part of Gurdaspur to be included in India to Justice Mahajan and His Lordship has very proudly quoted the reference in his autobiography: "Posterity will be grateful to him for his work on the Punjab Boundary Commission in 1947. His sagacity alone, it is said, saved a part of Gurdaspur district for India". (73) On the other hand the illiterate clergy, while propagating against the Ahmadiyya Community in 1953, openly abused and accused Sir Zafrulla that he caused the loss of Gurdaspur to India. The Punjab Disturbance Inquiry Commission 1954, recorded: "Vile and unfounded charges have been leveled against the Ahmadis that the district Gurdaspur was assigned to India by the Award of the Boundary Commission because of the attitude adopted by the Ahmadis and the arguments addressed by Chaudhry Zafrulla Khan who had been nominated by the Quaid-e-Azam to present the case of the Muslim League before the Commission. But the President of this court ( Mr. Justice Mohammad Munir), who was a member of the Boundary Commission, considers it his duty to record his gratitude to Chaudhry Zafrulla Khan for the valiant fight he put up for Gurdaspur. This is apparent from the record of the Boundary Commission which anyone who is interested may see. For the selfless services rendered by him to the Muslim community, it is shameless ingratitude for anyone to refer to Chaudhry Zafrulla Khan in a manner in which he has been referred to by certain parties before the Court of Inquiry". (74).

Throughout his stay in Lahore Sir Zafrulla stayed with his old friend Sir Syed Maratib Ali, whose exemplary hospitality included every thing from boarding lodging and transport to and from the Court, not only for him but for all and sundry who were engaged in serving the cause of Pakistan and Muslim League, and all from the goodness of his heart. (The compiler of this book is extremely grateful to Syed Babar Ali, the illustrious son of late Syed Maratib Ali, present Vice Chancellor of the Lums University Lahore, who has very kindly written the Foreword of this book.)

After he was free from his duty in Lahore, he was invited by the Quaid-e-Azam to a drivew meeting who enthusiastically embraced him and thanked him for his sincere and brilliant presentation of the Muslim League case before the Boundary Commission. He went back to Bhopal. "The Award of the Boundary Commission was announced on the 17th August 1947 when he was in Bhopal. I was stunned to hear the announcement on the Radio." (75). The Quaid-e-Azam said in his broadcast: "The division of India is now finally and irrevocably effected. The Muslim State has suffered injustices. We have been squeezed in as much as it was possible, and the latest blow that we have received was the Award of the Boundary Commission. It is an unjust, incomprehensible and even perverse award. It may be wrong, unjust and perverse; and it may not be a judicial but a political award, but we have agreed to abide by it and it is binding upon us. As honorable people we must abide by it. It may be misfortune but we must bear up this one more blow with fortitude, courage and hope." (76)

Sir Zafrulla Khan continued to serve in Bhopal. The first mention of Sir Zafrulla's services for Bhopal is in H.H. Bhopal's letter to the Viceroy, of August 7, 1947. " It is necessary for me

to go to Bhopal for a day or two for consultations, and I am leaving this morning for my State and hope to return here, if necessary, in two or three days time. But I have asked Sir Zafrulla Khan, who is remaining behind, to meet V.P. Menon and obtain a confirmation from him of the clarifications of the terms of the Instrument of Accession and implications which Your Excellency so kindly made yesterday. Sir Zafrulla proposes to discuss with him this matter some time today"

I am anxious to await the decision of Kashmir and Hyderabad before taking my final decision in regard to my State. I hope there would be no objection to my doing so." (77)

The H.H. Bhopal has foreseen what was evident and had written to the Viceroy on August 10, 1947. "In the event of my deciding to abdicate on or just before the 15th August, would it be possible to extend for about ten days the time limit for signing the Instrument of Accession. This would, I think, be only fair to my successor, Princess Abida Sultan, who naturally would want a breathing time for the purpose.

I am not doing this, I assure you, to gain time. I am delaying my final act with intention of doing everything possible in finding a solution which would enable me to sign our death warrant with a clear conscience. If I fail to find such a solution, I must abdicate rather take any action which, in my judgment, is not in the true interests of my dynasty and my people." (78)

The Viceroy's personal report to the Secretary of State for India dated August 8, 1947, describes: "Bhopal is still giving me a lot of trouble. I suppose I have spent more time on Bhopal's case than all the other States put together, because he is such a charming and high principled man that it would be a tragedy if he were to wreck his State by failing to come in now. His

Advisor, Zafrulla Khan told Ismay yesterday that the Nawab had been really badly shaken for the first time by the 2 hours conversation I had had with him the day before, and he was now seriously considering the accession after all". (79)

The footnote of the documents number 428 dated 11 August 1947 states that "In another letter dated 10 August 1947 the Nawab of Bhopal referred to the record of his discussion on 6 August with Lord Mountbatten, Mr. Menon and Sir Zafrulla Khan and mentioned that he wanted an extension of the time limit for signing the Instrument of accession to enable Bhopal State to see what decision Kashmir and Hyderabad would take." (80) The editors have added that no record of an interview on August 6 has been traced.

At last the Nawab of Bhopal wrote a letter to the Viceroy on 14th of August 1947, signed the Instrument of Accession and sent it to Lord Mountbatten with a covering letter by Sir Zafrulla Khan. This letter is dated the 14th August 1947.

My dear Lord Mountbatten,

Please refer to your letter of the 11th August 1947 in regard to an extension of ten days for Bhopal for signing of the Instrument of Accession. I am accepting your private advice contained in para 8 of your letter under reference, namely that I should sign the Instrument of Accession and Standstill Agreement as soon as possible (before midnight 14th August 1947) and hand them to you in a sealed envelope to keep in your safe custody until I have made up my mind one way or the other.

In accordance with the contents of your letter of the 11th August, and the arrangements arrived at between us at the Viceroy's House on the 12th August at 4-30 p.m. I have signed



and dated the Instrument of Accession and Standstill Agreement before midnight August 14 1947, and am sending them, as per agreement between us , in a sealed envelope with instructions in my own handwriting on the envelope that it shall not be opened or delivered to the States' Department until the evening of the 25th August 1947, unless I authorize you to do so earlier. Should I decide not to accede, Your Excellency will, in accordance with the further understanding given by you in your letter of the 11th August 1947, return to me any time up to the evening of 25th August 1947, the sealed envelope, containing Instrument of Accession and Standstill Agreement signed by me and placed in your safe custody. I note that Sardar Patel has given his consent to these arrangements. I shall be grateful for a proper acknowledgement and receipt of this letter and the sealed envelope is kindly given to me (ID) you and handed over to the bearer of this letter.

Complete secrecy shall, as far as humanly possible, be maintained over the special treatment which my State is being accorded. I note that Sardar Patel has also agreed equal to maintain secrecy.

As regards my abdication, the situation here is so tense and so charged that if I abdicate at this juncture it will , I now find, lead to most horrible consequences. The life of a single Hind or Moslim subject of mine is far more dear to me than thousand abdications whatever the reason for abdication may be. I have therefore decided not to abdicate at present.

I will let you know my final decision in regard to the accession of my State on or before the 25th August 1947.

I am enclosing in the sealed envelope, which is being sent to you for safe custody until the 25th August 1947, copies of the

following documents:

Instrument of Accession--signed  
Standstill Agreement--signed.

Memorandum of clarification of Draft Instrument of Accession as the result of discussion between H.E., the Crown representative and H.H. the Ruler of Bhopal on 6th August 1947, with the covering letter addressed by Sir Zafrulla Khan to Mr. V.P. Menon of the States Department.

The State Departments' reply to Sir Zafrulla Khan's letter confirming the record of discussion between the Viceroy, Mr. Menon and H.H. of Bhopal and Sir Zafrulla Khan.

Your letter dated 11th August 1947 addressed to me.

My letter addressed to You dated the 14th August ( 6-15 p.m.) 1947.

Yours very sincerely,  
HAMIDULLAH." (81)

The footnote number 8 says that (State Department's reply to Sir Zafrulla's letter) was not traced in the record. (82)

At the end of August, Quaid-e-Azam , the first Governor General of Pakistan sent for him and asked him to lead Pakistan's delegation to the United Nations in New York. The delegation consisted of H.E. Mr. M.A. Isphahani, the Pakistani Ambassador in the USA, Pirzada Abdus Sattar, a Sind Minister, Mir Laiq Ali, an Industrialist and Begum Tasadduq Hussain.

The scheme of partition provided that India would continue to be a member of the United Nations, and Pakistan would apply for its membership as a newly created State. Pakistan applied for

the membership and was recommended by the First Committee for admission United Nations as a new member. Moving the First Committee's recommendations in the General Assembly's 92nd Plenary meeting on 30 September 1947, Mr. Mcneil (United Kingdom) said: "I am most grateful for this opportunity of moving the adoption of the report of the First Committee. I have no doubt that the report will be accepted with acclamation, but, I am now afforded the opportunity of saying not only that my delegation is glad that these two applications are now about to receive final approval, and is confident that both these countries ( Pakistan and Yemen) will make decisive contribution to our deliberations, but I am also given the opportunity of saying that my delegation, of course, is particularly interested in the admission of Pakistan.

Although Pakistan has attained its present status only recently, it has already shown great vitality. If its delegation has not been inside the General Assembly until now, it has not been very far from us and many of us have already enjoyed benefit of its advice. The head of the delegation, Sir Mohammad Zafrulla Khan, is well known to many of us. He will be a great asset in all the work of the General Assembly and its Committees.

Therefore, while I , on behalf of my delegation, formally move the adoption of the report of the First Committee, I add the congratulations and best wishes of my Government to Yemen and Pakistan.

The representatives of Egypt, U.S.A., Iran, Iraq, India, Lebanon and Brazil spoke in favor of the motion except the representative of Afghanistan who opposed the admission of Pakistan. Then the President of the General Assembly invited Sir Mohammad Zafrulla Khan, the Head of Pakistan's delegation, to address the Assembly. He said: "I should like to thank the

President and the delegations of the United Kingdom, Egypt, the United States of America, Iran , Iraq, Lebanon and Brazil for the kind words of welcome with which the admission of Pakistan to the United Nations has been greeted.

I also desire to thank the General Assembly, on behalf of the Government of Pakistan and the members of the delegation, for the admission of Pakistan to the United Nations.

In one sense, the admission of Pakistan to the United Nations is not the admission of a new member. Until 15 August of this year, Pakistan and India constituted one State. On 15 August they agreed to constitute themselves into two different sovereign States. One chose to continue to call itself by the old name of India, which has applied to the whole of the country, and the other elected to call itself by the name of Pakistan.

Inasmuch as Pakistan had been a part of India, it was, in effect, under the latter name, a signatory to the Treaty of Versailles and an original member of the League of the Nations. I recall that I had the honor of being the Head of the Indian delegation at the last session of the Assembly of the League of Nations at Geneva in December 1939. In the same sense, Pakistan as a part of India, participated in the San Francisco Conference in 1945 and became a signatory to the United Nations Charter. Therefore, Pakistan is not a new Member of the United Nations, but a co-successor to a Member State which was one of the founders of the Organization.

Though Pakistan's admission to the United Nations is only a formal proceeding, Pakistan interprets it as an expression of confidence in the devotion of Pakistan to the ideals of the United Nations, of which it hopes it will continue to give ample proof on every occasion and in every direction.



It was more than two years since the Second World War is supposed to have come to an end; yet the world is still groping for peace, which seems continuously to elude its grasp. The great nations, which were able to pool their resources and their statesmanship for the winning of the war, appear to be afflicted with incapacity to come to a frank and whole-hearted agreement on the lines upon which the foundations of peace should be laid. On behalf of my Government, I beg to convey to the United Nations the assurance that Pakistan will do all which lies within its power to bring about a better understanding among nations and to make the utmost contribution towards the alleviation of all forms of human suffering and distress, and the promotion of beneficent co-operation among the nations for the general raising of standards of living and the fostering of liberty and tolerance throughout the world.

In the past, armed conflicts have resulted mainly from false notions of racial superiority, the desire of economic exploitation of the weak by the strong, and intolerance of ideas that were not in accord with those that one nation preferred for itself and desired to impose upon others. Pakistan will always endeavor to promote that which tends towards the widening of liberty and equality, beneficent co-operation, and widest and deepest tolerance, as it is convinced that it is only through these means that peace can be assured and humanity speeded towards the achievement of true prosperity.

It would, I conceive, not be open to me at this stage to submit any observations on what the United Nations have so far achieved and what it has been unable to accomplish. Permit me, however, to say that we of the Pakistan delegation, while fully appreciating the ideals of the United Nations, are equally conscious of its handicaps and shortcomings. As has been said,

however this is an imperfect world, and it is precisely for this reason that a world organization of the character of the United Nations is indispensable if mankind is to have a reasonable

chance of escaping calamities and disasters out of all comparison with those which it has had to endure in the recent past. We are convinced that the United Nations offers to mankind its last chance of salvation in the political, economic and social fields, and that our united efforts ought to be directed towards strengthening the Organization, discovering means of making it work in the spirit in which it was founded, and achieving the ideals which have been set as its goal. Pakistan will always make its fullest contribution towards that end" (83)

Reverting to his autobiography, "The most important item on the agenda of the Assembly was the question of Palestine, which had been submitted by the United Kingdom as Mandatory of Palestine. It had so happened that he had visited Palestine in the summer of 1945, and had been so much impressed by what he had seen of Zionist enterprise in the country that he had become very apprehensive about the future of the Arabs in that land. He had thereafter made a study of the problem of Palestine, particularly the pledges that had been given by the United Kingdom to Sharif (King) Husain of the Hedjaz, through Sir Henry MacMahon. He was thus familiar with certain aspects of the problem of Palestine. Pakistan was not yet widely known in international circles. Even the Arab countries, members of the United Nations, Egypt, Syria, Iraq, Lebanon, Saudi Arabia and Yemen were not yet fully conscious of the fact that Pakistan was a completely independent country, the population of which was predominantly Muslim. He had noticed that the delegations of Arab countries who spoke often and at length spent a great portion of their time in exposition of matters that were not

strictly relevant to the issue which the Committee had to deal, or had only sentimental value. Some of the presentations, for instance those made by Mr. Camille Shamaoun of Lebanon and Dr. Fadhil Jamali of Iraq were excellent, but did not cover the whole field between them. There was a lack of co-ordination between the speakers. He, therefore, made up his mind to present the Arab side of the case in a comprehensive, coordinated, chronological address which should carry convictions to the minds of the listeners. Coming from a non-Arab its impact should be all the greater. When he started speaking the Arab delegates had not the haziest notion of what he would say and on which side he would plump. They probably paid no attention to his preliminary observations, then a phrase or a nuance struck them as significant and claimed their interest and slowly, very slowly they began to perceive that a masterly presentation of their case was in progress to which the members of the Committee were listening with rapt attention. From then on no doubt was left in the their minds of the strength and righteousness of their case. When the comprehensive presentation was concluded, they all clustered round him and overwhelmed him with lavish and extravagant praise. That is the Arab way, they love extremes.

But a good case well presented was not enough. There were currents and undercurrents, above the surface and below the surface, palpable and impalpable. The debate dragged on in the Committee. The end of the Session loomed ahead. The delegates were bored with constant repetition of the same things. The Chairman of the Committee, Dr. Evatt, Foreign Minister of Australia, was anxious to get to London in time to be present at the wedding of Princess Elizabeth. The Committee decided to proceed to vote on various aspects of the scheme for partition.

The partition plan was adopted by the Committee, where only a simple majority of votes was required to put it through. The Arab hopes were now fixed upon the plenary session of the Assembly, where a resolution recommending partition would require two thirds majority for its adoption."

In short " the resolution for the partition of Palestine was carried, the die was cast, and the Arabs and the Jews were set by the ears for generations. President Truman will go down in history as the statesman whose decision released the atomic bombs on Hiroshima and Nagasaki, and whose determination pushed the partition of Palestine through the General Assembly of the United Nations". (84)

He went back to Karachi and informed the Governor General on the work of the delegation in the General Assembly." When he was taking leave, Mr. Jinnah said in an aggrieved tone: "When are you going to get rid of these entanglements ? Don't you know I need you here?

Sir, I am at your service.

Are you going to Lahore?

I shall stop in Lahore on my way to Bhopal.

See Liaquat Ali Khan in Lahore.

The Prime Minister of Pakistan, Nawabzadah Liaquat Ali Khan was indisposed and was in Lahore. They talked about the current situation and then the Prime Minister asked : Did Mr. Jinnah mention anything to you?

He told me to see you, which I would have done in any case.

Well, we need you. There are several possibilities. Mr. Daulana the Chief Minister of the Punjab, has told Mr. Jinnah



that things are getting out of hand here and they need a strong Chief Minister. He mentioned your name to him. Then we have to set up our Supreme Court. You could take over as Chief Justice, and start looking round for your colleagues, and begin framing the rules and regulations. I am holding the portfolios of Defense and Foreign Affairs and I have to do more than I can manage. You could relieve me of Foreign Affairs. How long will you be in Lahore?

Two days.

Think over what I have told you, and let me know your choice before you leave.

Very Good.

But there is one thing, Jinnah wants you to be Foreign Minister.

Then what is the choice?

Well that is what he wants. How soon can you come to Karachi?

I shall try to come as early as I can. I must first obtain Nawab Sahib's permission.

His Highness made no difficulty. He said: We are beginning to realize that our future in independent India is not too bright. If, at this stage, you can be of service to Pakistan, that will also be service to the Muslim cause, and I shall not stand in the way. When would you wish to leave?

As early as your Highness could spare me.

How do you propose to travel?

I suppose by train to Bombay, then by sea to Karachi.

No. That would not be safe, and I would not permit it. Take

my bigger plane. I shall obtain clearance from Government of India for the plane to fly direct to Karachi, without having to land at border for check up.

That would be most kind of your Highness.

Just before his departure the Nawab Sahib sent him a cheque for a substantial amount to meet the immediate requirements in Karachi. It was a truly princely gesture." (85)

"He arrived in Karachi in the afternoon of 24th December and was sworn in next morning" as the Foreign Minister of Pakistan. (86)

From 25th December 1947 a new chapter of his illustrious career in the service of Pakistan and in particular to Islam and the Muslim community in general commenced, and there ends the scope of this book.

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## INDEX

*Aga Khan*, 24, 108

*Ahmadi*, 6

*Ahmadiyya*, 13, 102, 208,

211

*Army*, 68, 69, 137, 149, 203

*Assembly*, 9, 10, 14, 15, 18,

21, 39, 42, 45, 93, 96,

108, 119, 200, 216, 217,

218, 220, 222, 230

*Attlee*, 20, 186, 210

*Awami*, 103

*Bank*, 89

*Bengal*, 29, 48, 57, 80, 93,

107, 113, 114, 153, 154,

205

*Britain*, 25, 39, 42, 43, 45,

59, 61, 68, 88, 142, 152,

183, 185, 189, 192, 196

*Burma*, 24, 57, 147, 155

*Cambridge*, 10, 27, 31, 107

*Coalition*, 200

*Committee*, 9, 21, 22, 25,

31, 33, 53, 73, 133, 142,

159, 174, 185, 186, 188,

199, 216, 217, 221, 222,

225

*Commons*, 38, 161

*communal*, 27, 41, 47, 50,

59, 63, 72, 90, 151, 168,

174, 175, 185, 203

*concept*, 25, 31, 99, 101,

104, 106, 112, 115, 116,

117

*Congress*, 26, 38, 41, 42,

43, 44, 72, 87, 93, 97,

132, 138, 146, 147, 155,

183, 205

*constitution*, 19, 38, 39, 42,

43, 45, 47, 56, 77, 80, 83,

85, 88, 89, 116, 130, 155,

160, 161, 164, 167, 168,

169, 177, 178, 180, 181,

185, 187, 191, 197

*continent*, 14, 15, 24, 47,



- 107, 111  
*Convention*, 57, 114  
*Council*, 5, 6, 9, 15, 18, 21,  
 33, 34, 35, 36, 108, 119,  
 121, 127, 128, 129, 132,  
 138, 144, 152, 153, 154,  
 158, 159, 164, 171, 174,  
 199, 203  
*declarations*, 40, 44, 49  
*defense*, 39, 58, 68, 70, 104,  
 135, 136, 139, 178, 181,  
 183, 186  
*delegates*, 27, 31, 32, 108,  
 172, 184, 221, 222  
*detractors*, 94  
*Diarchy*, 18  
*Dominion*, 33, 35, 38, 44,  
 46, 57, 60, 61, 68, 69, 71,  
 85, 88, 89, 122, 185, 202,  
 205, 206  
*dominions*, 33  
*England*, 8, 18, 19, 21, 26,  
 146, 159, 165, 193, 198,  
 208, 225  
*Fazle Husain*, 18, 21  
*Fazle Hussain*, 18  
*Federal Court*, 5, 9, 17, 74,  
 85, 86, 87, 119, 120, 121,  
 122, 123, 125, 139, 142,  
 143, 150, 156, 159, 164,  
 165, 167, 169, 170, 172,  
 173, 174, 175, 198, 201  
*Federation*, 25, 38, 46, 57,  
 60, 62, 63, 64, 65, 66, 69,  
 71, 72, 80, 98, 101, 111,  
 113, 181  
*finance*, 39  
*forces*, 45, 70  
*Gandhi*, 26, 38, 39, 42, 154  
*Geneva*, 18, 218  
*Government*, 8, 15, 17, 22,  
 25, 39, 45, 52, 68, 70, 74,  
 78, 86, 88, 98, 104, 119,  
 121, 122, 124, 129, 142,  
 146, 147, 151, 154, 156,  
 157, 162, 168, 169, 175,

- 177, 184, 190, 191, 199,  
 203, 205, 217, 218, 219,  
 224  
*Governor*, 6, 9, 44, 45, 69,  
 72, 74, 84, 85, 86, 89, 90,  
 97, 98, 108, 153, 171,  
 178, 197, 201, 216, 222  
*Hindu*, 43, 46, 48, 49, 55,  
 56, 81, 91, 93, 94, 102,  
 105, 177, 185  
*humanity*, 42, 219  
*Imperial*, 5, 68, 127  
*India*, 5, 9, 15, 17, 18, 20,  
 22, 24, 25, 26, 30, 32, 33,  
 35, 36, 38, 39, 42, 43, 44,  
 46, 47, 49, 55, 56, 57, 59,  
 61, 62, 63, 64, 65, 67, 68,  
 70, 71, 72, 77, 79, 80, 87,  
 88, 90, 92, 97, 98, 99,  
 100, 101, 102, 103, 106,  
 107, 108, 111, 112, 113,  
 114, 115, 116, 119, 120,  
 121, 122, 124, 125, 127,  
 129, 130, 131, 133, 134,  
 135, 139, 141, 142, 144,  
 145, 146, 147, 148, 150,  
 151, 152, 153, 155, 156,  
 157, 158, 159, 161, 162,  
 163, 164, 167, 168, 169,  
 170, 172, 173, 174, 175,  
 177, 178, 181, 183, 184,  
 185, 186, 187, 188, 189,  
 190, 191, 194, 197, 198,  
 199, 200, 201, 202, 203,  
 204, 205, 209, 210, 212,  
 213, 216, 217, 218, 224,  
 226, 227, 228, 229  
*Indianisation*, 15, 69, 132,  
 133, 137, 145, 149, 151,  
 152, 155, 157, 164, 166  
*Islamia College*, 27  
*Islamic*, 11, 95, 102, 116  
*Jinnah*, 6, 24, 34, 35, 92,  
 95, 106, 108, 198, 201,  
 202, 222, 223  
*Kapurthala*, 19

- Kashmir*, 94, 124, 171, 203,  
206, 212, 214
- Khwaja Abdul Rahim*, 27,  
29
- Labour Party*, 20
- League of Nations*, 9, 18,  
218
- Legislature*, 17, 18, 19, 21,  
45, 46, 60, 61, 64, 67, 68,  
73, 79, 80, 83, 160, 187
- liberty*, 42, 45, 70, 76, 86,  
127, 219
- London*, 9, 10, 19, 22, 27,  
29, 39, 92, 102, 128, 142,  
143, 144, 145, 152, 153,  
154, 164, 182, 184, 197,  
198, 199, 202, 204, 205,  
206, 222, 227, 228, 229
- Lord*, 6, 20, 25, 26, 33, 35,  
38, 53, 97, 111, 116, 117,  
127, 139, 141, 142, 150,  
153, 156, 165, 173, 184,  
186, 187, 188, 197, 198,  
199, 200, 202, 203, 204,  
205, 206, 209, 210, 214,  
225, 229
- MacDonald*, 25, 151
- Magistrate*, 76, 87
- majority*, 41, 44, 46, 53, 72,  
80, 82, 87, 91, 99, 114,  
148, 172, 177, 179, 180,  
181, 203, 207, 209, 222
- memorandum*, 33, 35, 36,  
92, 126, 127, 138, 142,  
153, 155, 185
- millennium*, 41
- minorities*, 41, 43, 47, 53,  
58, 61, 72, 74, 79, 84, 85,  
91, 180, 182, 185
- Mohammed Ali*, 24
- Montagu-Chelmsford*, 18
- Muhammed Shafi*, 24
- Muslim*, 9, 18, 20, 24, 27,  
30, 32, 33, 34, 39, 46, 48,  
49, 55, 57, 60, 62, 67, 69,  
77, 81, 82, 83, 84, 93, 96,  
97, 98, 99, 101, 102, 104,  
105, 106, 107, 108, 110,

- 111, 112, 114, 115, 116,  
120, 128, 138, 153, 175,  
177, 178, 181, 182, 185,  
200, 201, 204, 206, 208,  
209, 211, 212, 221, 224
- Oral History*, 8, 17, 225
- Pakistan*, 6, 9, 10, 13, 14,  
15, 16, 27, 29, 30, 31, 32,  
33, 34, 55, 57, 92, 93, 94,  
95, 96, 97, 98, 99, 101,  
102, 103, 104, 106, 109,  
110, 111, 112, 113, 114,  
116, 117, 153, 175, 198,  
200, 201, 205, 209, 211,  
216, 217, 218, 219, 220,  
221, 223, 224, 225, 227,  
229
- Palace*, 24
- Parliament*, 9, 18, 25, 45,  
61, 69, 185, 191, 202
- partition*, 15, 28, 29, 30, 31,  
93, 97, 99, 108, 201, 216,  
222
- populations*, 30, 50, 55, 57,  
107, 110, 113, 114
- Princely States*, 25
- Province*, 21, 57, 70, 71, 75,  
81, 85, 88
- Provincial*, 21, 22, 45, 65,  
66, 67, 69, 71, 78, 81, 83,  
84, 85, 86, 88, 89, 135,  
200
- Punjab*, 5, 9, 15, 17, 18, 21,  
29, 48, 57, 71, 80, 96,  
109, 113, 114, 119, 153,  
198, 200, 201, 204, 205,  
206, 209, 210, 223, 229
- Qadiani*, 34, 35
- Qaid-i-Azam*, 31
- Quran*, 6, 10
- reform*, 31, 87
- Rehmat Ali*, 27, 31, 107,  
110, 111, 113
- report*, 18, 20, 21, 22, 92,



- 145, 146, 149, 156, 159,  
164, 200, 207, 213, 217  
representatives, 24, 26, 39,  
62, 73, 76, 78, 81, 83, 84,  
122, 138, 146, 179, 180,  
217
- Roundtable, 22, 24, 25, 26,  
27, 30
- Royal, 18, 19, 20, 182
- Sarojini Naidu, 26
- scheme, 25, 29, 31, 32, 33,  
34, 46, 55, 56, 57, 59, 61,  
62, 65, 67, 71, 77, 80, 82,  
85, 102, 107, 108, 110,  
111, 112, 113, 114, 115,  
117, 131, 132, 142, 154,  
185, 186, 201, 216, 222
- Sikandar Hayat, 21, 33, 96
- Simla, 18
- Simon, 19, 20, 164
- Sovereign, 47, 60, 68
- Status, 35, 38, 44, 46, 60,  
61, 68, 71, 122  
subcontinent, 29, 30, 97,  
100, 104  
Sultan Ahmed, 24  
territorial, 70  
Transfer of Power, 8, 17,  
119, 124, 126, 150, 155,  
173, 203, 226, 227, 228,  
229  
Treaty, 9, 68, 71, 218  
Tribes, 71  
Unionist Party, 18, 22, 200  
Upper House, 65, 80  
Viceroy, 5, 6, 15, 26, 33, 34,  
35, 36, 38, 42, 44, 102,  
119, 120, 121, 124, 125,  
130, 132, 133, 136, 137,  
139, 140, 141, 142, 143,  
144, 145, 146, 148, 150,  
151, 152, 153, 154, 156,  
159, 163, 164, 165, 167,

- 168, 169, 170, 172, 173,  
174, 197, 198, 199, 200,  
202, 205, 206, 209, 210,  
212, 213, 214, 216
- Wali Khan, 13, 33, 34, 92,  
96, 101, 102, 103, 104,  
225

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